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RECOMMENDATION

The Subcommittee on Judiciary recommends:

> That the bill providing for the recodification and general revision of the alcoholic beverage control laws be enacted by the 44th Legislature.

SENATE RESOLUTION NO. 75*

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA REQUESTING THE COMMITTEE ON PRIORITIES TO ASSIGN THE APPROPRIATE STANDING COMMITTEES TO STUDY THE LIQUOR LAWS FOR THE PURPOSE OF GENERALLY UPDATING AND REVISING SUCH LAWS.

WHEREAS, the provisions concerning alcoholic beverages in Title 4 of the Revised Codes of Montana, 1947, were enacted, for the most part, in 1933 and have not been revised in forty-one (41) years, and

WHEREAS, a number of these provisions are obsolete, archaic, or presently serve no useful social purpose, and

WHEREAS, a legislative study of the liquor laws, which would make recommendations for the general updating and revision of such laws while not making recommendations for any fundamental change in the policies underlying the laws, would be useful to the legislature and the people of Montana.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Committee on Priorities is requested to assign the appropriate standing committees to study the statutory provisions governing the sale and consumption of alcoholic beverages, to recommend such revisions and deletions in these laws as is needed to bring the laws up to date and to remove provisions which are found to be archaic or obsolete, while making no recommendations as to the basic policies underlying the liquor laws, and to report its findings and recommendations to the first session of the Forty-fourth Legislature.

*House Resolution No. 85

INTRODUCTION

Historical Development of Montana Alcoholic Beverage Control Laws

The legislature enacted the basic statutes controlling alocholic beverages in the waning days of prohibition. Chapters 105 and 106, Laws of 1933, passed prior to the repeal of the Eighteenth Amendment, conditioned to take effect when federal prohibition lifted.[1] Laws of the province of Alberta served as models for the Montana statues.[2]

Chapter 105, the Liquor Control Act, established the state monopoly on liquor; and Chapter 106, the Montana Beer Act, allowed the beer industry to operate subject to licensing regulations. Retail sale of beverages by the drink was limited to beer sales.[3]

Statues enacted in 1933 did not allow sales of liquor in taverns. By 1937, legislators knew that liquor -- much of it bootleg -- was being sold in taverns in spite of the law. The illicit nature of these acts gave rise to graft and protection payments.[4] To eliminate the illegal traffic in liquor and ensure the success of the state liquor monopoly, the 1937 Legislature authorized the retail sale of liquor.[5] Taverns were licensed under this law without limitation until the first enactment of a quota system in 1947.

The basic policy underlying liquor laws passed in the 1930's was regulation and limitation of the manufacture and sale of alconolic beverages. Profit to the state by operation of these laws was incidental to their main purposes.[6]

While profit to the state was incidental at the outset, revenues received from the sale of liquor, taxes, and licenses are no longer incidental. In fiscal year 1974, more than eighteen million dollars were received for the use of state and local governments. Comprising just over 11% of total state revenue, alcoholic beverage profits and taxes rank third in revenue sources for the state. Only the income tax and gasoline tax derive greater revenue.[7] Derivation of revenue has become one of the basic policies underlying the liquor laws today.

Since enactment of the basic liquor control statutes, amendments have been made repeatedly. The most significant change since 1947 and the quota system was the 1973 abolition of the Montana Liquor Control Board and assignment of its functions to the Department of Revenue. The department brought a new measure of professionalism to the administration of the alcoholic beverage control laws. Efficient administration of the laws has revealed much "dead wood" -- obsolete or archaic provisions -- no longer serving useful purpose. Recognition of this fact by the department and the legislature, led to the passage of SR 75 and HR 85 asking for recommendations for the general updating and revision of the liquor laws.

Subcommittee Recommendation

The subcommittee recommends the attached bill to accomplish the revisions and deletions necessary to bring the liquor laws of this state up to date and to remove provisions it has found to be archaic or obsolete. At the same time, there are no proposals in the bill so sweeping as to reorient basic policies that have underlain the liquor laws for the past forty years. The subcommittee recommends the bill as the vehicle to fulfill the charge given to it by SR 75 and HR 85 as assigned by the Committee on Priorities.

SUBCOMMITTEE DELIBERATIONS

The subcommittee reviewed the alcoholic beverage control laws at three plenary meetings and in one meeting of a three-member study group. At the first meeting, the subcommittee established its study goals. Testimony from interested groups was heard at the second meeting and a study group was appointed to work on the details of revisions proposed by the staff, the department, and the interest groups. At its third meeting the subcommittee considered the recommendations of the study group.

At the first meeting, May 3, 1974, the subcommittee determined that the present purposes of the liquor laws are not necessarily the same as the original 1933 purposes. As determined by the subcommittee, the laws in 1974 serve to:

(1) control the manufacture and sale of alcoholic beverages;

(2) raise revenue for the state;

(3) accommodate the desires of the people to purchase alcoholic beverages.

Throughout its deliberations, the subcommittee considered the "basic policies underlying the liquor laws", mentioned in the study resolutions, to consist of the above three policies. Then, also at the first meeting, the subcommittee agreed on five study goals:

(1) maintain the license quota system but review and modify it to make it more viable, equitable, and operable;

(2) review the method for routine transfer of licenses and recommend ways to make such transfers more expeditious;

(3) study all laws with a view toward updating them and removing archaic language;

(4) gather information concerning the purchasing and pricing of liquor and wines;

(5) study liquor and beer acts with the view toward coordinating them.

The staff, the Department of Revenue, and interested groups were then asked to develop information and recommendations related to the study goals.

Study goals (3) and (5) together led the staff and the department to suggest a complete recodification of Title 4. The staff offered a bill to repeal all sections in the title and enact a new code, while the department proposed extensive amendment and rearrangement of the existing sections. At a public hearing on July 12, the subcommittee selected the department's proposal as the vehicle for further work. The chairman then appointed a study group to refine the proposal.

Study goals (2) and (4) were met through reports from the department and the staff presented at the public hearing. No changes in the law governing routine license transfers or purchasing-pricing policies are recommended by the subcommittee at this time.

Modification in the license quota system was developed in response to a comment by counsel for the Montana Tavern Association at the public hearing. Study goal (1) was thus achieved through the "floating license" formula, discussed below.

On August 9, the three member study group considered the floating license, general revision, and rearrangment of the sections. The study group considered all issues at this meeting, made its final recommendations and assigned the staff to draft those recommendations in bill form.

The study group reported to the full subcommittee at the third meeting, September 14, by presenting its proposed bill section-by-section. After adopting a number of amendments, mostly of a clarifying nature, the subcommittee accepted the study group recommendations and ordered a bill prepared for introduction.

FINDINGS AND RECOMMENDATIONS

A. Definitions

Definitions outline the basic meanings of the words and phrases used in the alcoholic beverage control laws. Because several basic acts established the laws, several sections contain definitions: Sections 4-102, 4-302, and 4-402, R.C.M. 1947. Among these sections are seven duplicative definitions as well as

other definitions that are unnecessary or archaic.

Definitions of alcoholic beverages present the most significant problems. In the forty years since enactment of the control laws, the alcoholic beverage industry has changed considerably. Another development affecting our law is growth in federal government control of the industry. The Department of Treasury, through its Bureau of Alcohol, Tobacco, and Firearms, publishes extensive regulations defining and describing beverage, cooking, and industrial products containing alcohol. Industry follows these regulations, published in 27 CFR 2, in its national marketing operations. A comparison of federal regulations with definitions in present Montana law reveals significant difference. Definitions presuming to identify the three classes of alcoholic beverages controlled (distilled spirits, wine, and beer) do not accurately describe products marketed today.

Wine, as defined by Section 4-103, is an "alcoholic beverage obtained by the fermentation of the natural sugar contents of fruits (grapes, apples, etc.); or other agricultural products containing sugar (honey, milk, etc.)." Wine so produced is often called natural wine. International wine trade purists argue that wine must be produced from natural sugar to be called natural wine; and argument, however, of no consequence for Montana law. But note that most wine sold in the United States contains sugar added to assure product uniformity. Adding sugar to correct natural deficiencies is known as amelioration. Amelioration is a standard wine industry practice that should be recognized if wine is to be available under Montana law.

Another problem with the present definition of wine is that it does not allow recognition of fortified wines -- wines to which distilled alcohol has been added. Aperitif wines, sherries, and port represent fortified wines commonly marketed as wine but not technically recognized as wine by Montana law.

Obsolescence also characterizes the present definition of beer. The federal government has fewer regulations for beer, but those few conflict with Montana law. Modern breweries, for good or ill, no longer produce beer exclusively from malted barley, hops, and pure drinking water. Brewers add sugar and other substances designed to standardize and preserve the brew. Federal regulations describe additivies as "other wholesome food products." The same regulations also recognize greater variation and complexity in the brewing industry than does Montana law.

Since no breweries operate in Montana today, the continued legal availability of beer as it is marketed nationwide demands new definition of that product.

The recommended bill would repeal the existing definitions and enact a new section (Section 110) of definitions correcting the faults described above.

The subcommittee also recommends changing the definition of beer to include beverages like beer from 4% to 7% of alcohol by weight. Sales of stronger beers--ales and malt liquors--amounted to only $24,000 in the Montana state liquor stores last year. The same brewers brew the 6% beverage who brew the 4% beers, and it seems rational to market all brewery products in the same way. Changing the definition as proposed would allow all common malt beverages to be handled as beer.

B. License Quota System

The 1947 Legislature established the first limit on the number of retail beer and liquor licenses to be issued in cities and towns and within five miles of their boundaries.[8] The legislature later placed limits on liquor license sold in counties outside the five mile limit.[9] The numbers are determined by an area's latest decennial census population.

License limitations imposed under the 1947 and 1963 laws are known as the quota system. No clue can be garnered from the statutes as to the legislative purpose of the quota system. A history of the Liquor Control Board suggests legislative action "seemed to be based upon the assumption that the more retail outlets in existence the greater would be the consumption of alcohol and the evils of intemperate use."[10] The Director of Revenue has suggested that the quota system can also be viewed as a tool for the prevention of violations. Relatively high demand should help keep tavern operations solvent. A businessman making good money legitimately should be less inclined to gain from illegitimate sales.[11]

Whether the quota system has served the above purposes is questionable. The subcommittee found that grandfather clauses and the problems of growth between federal census years are two severe problems today. There are 92 licenses in the city of Butte and the five miles around it -- one for every 250 people. There are 50 licenses in Billings and environs, or one for every 1500 people. A license can be purchased in Butte for less than $5,000, while testimony indicated the latest asking price for a license in Bozeman is $100,000. This situation creates inequities and impediments to business that are not necessary to the achievement of the basic policies underlying the liquor laws.

The subcommittee recommends changing the prohibition against transferring a license from one area to another now contained in the Section 4-410, R.C.M. 1947. Under the proposed amendment, the department could authorize transfer of a license from a community where the number of actual taverns was at least 25% over quota, into a community where the actual number was less than 25% over quota. To prevent windfall profits, a license that had "floated" into a new community would be a personal privilege and could not be transferred (except by inheritance). This restriction was imposed out of consideration for the tavern owner who may have just spent $50,000 or $60,000 for a license in Bozeman or

Billings. His investment would obviously be undercut were licenses bought at bargain rates in an over-quota town, floated in, and sold right away or even after five years. The formula would allow five licenses to float into Bozeman and the same number into Billings; at this time no other cities would be affected.

Another change in the quota system sections drops the requirement that a liquor licensee hold a separate beer license and calls a liquor license an "all-beverages" license covering beer sales too. One of the quirks in the present law is that the quota for beer-in-conjunction-with-liquor licenses is different than the quota for liquor licenses. A further proposal is to revise the operation of the 1974 statute that amended the way population outside the city limits is counted. The proposal would include the fringe population with the city population only when a special census shows more people living in the five-mile fringe than in the city. This situation now prevails only in Libby.

C. Routine Transfers of Licenses

The Department of Revenue provided the following account of how it processes a license transfer application:

STEPS IN PROCESSING APPLICATIONS
FOR NEW, AND TRANSFER OF, LIQUOR LICENSES

STEP 1-Audit and Accounting Division, Cashiers Bureau

Application is received, fees are receipted and money deposited to proper accounts. Cashiers number and amount received are endorsed on the application and all documents are forwarded to the Liquor Division.

STEP 2-Liquor Division

License Bureau Chief reviews application, determines if, under quota, licenses are available (this is done on applications for new licenses only). Completes document check list and notes if corrections or additional documentation is needed to complete applicant's file. Reviews contracts, estate documents etc. for [illegible].

New Applications	Transfers
(1) Secretary reviews document check list and verifies.	(1) Secretary reviews document check list and verifies information.
(2) Contacts the applicant	(2) Checks the permanent

by phone or letter if corrections or additional documentation is needed. (If quota is filled, the applicant is contacted by letter and advised that under the law his application cannot be accepted and the documents submitted are returned. Request for refund of license fee is transmitted to the Audit and Accounting Division.)

(3) Notifies Investigation Bureau of application and requests investigation of applicant and inspection of premises.

license file to determine if any Liens of Attachments have been filed against the current license.

(3) Contacts applicant, by phone or letter, if corrections or additional documents are needed. (If a lien or attachment has been filed, applicant is also notified that no transfer may be effected until the proper release is obtained.)

(4) Notifies Investigation Bureau of transfer and requests investigation of applicants and inspection of premises. (Notification is also sent to interested agencies: Employment Security Division, Internal Revenue Service, Montana Tavern Association, Wholesalers Assocation, etc.)

STEP 3-Investigation Bureau

(A) The Chief Liquor Unit Investigators receives request for investigation, assigns and relays request to the appropriate district investigator.

(B) District Investigator

(1) Contacts applicant for an interview to obtain necessary personal history information.

(2) Inspects premises proposed for licensing and advises applicant of discrepancies which may need correction. (Investigators, very often, contact local health and fire marshall agencies to verify suitability of premises in these areas.)

(3) Local enforcement officials are contacted to obtain record check on applicant.

(4) Written investigation report, local record check, etc. are transmitted to Investigation Bureau (Helena).

(C) Investigation Bureau reviews district investigator's report. If applicant has resided in a city in Montana other than that for which he has applied, or out of the state, within the last three to five years, this information is transmitted to the Law Enforcement Teletype Service (LETS) and a request is made to contact local authorities in these locations for a check of records on the applicants.

When this information is received from LETS all information and reports are transmitted to the Liquor Division, License Bureau. (If any of the record checks indicate criminal activity on the part of the applicants, the District Investigator will be contacted and asked to obtain fingerprints from the individuals and the record is double checked to verify.)

STEP 4-Liquor Division

(A) License Bureau Chief reviews Investigation Bureau reports. (If Investigation Bureau report indicates applicant definitely does not qualify, the application is returned at this point and the applicant is notified of reasons. Again District Investigator may be required to investigate further for purposes of verification.)

(B) Secretary schedules and sets date for hearing; processes necessary forms for publication of application (4 weeks for a new application, 2 weeks for transfer); types and sends Notice of Hearing to appropriate parties (applicants, attorneys, current licensees in case of transfer, mortgagees, Investigation Bureau, etc.)

(C) Hearings - If application if not contested, Hearing Examiner reviews file with the Division Attorney, License Bureau Chief and representative from the Investigation Bureau. The Hearings Examiner will pass down decision and request that a written Order be prepared for his signature, to be sent to applicant.

In contested case, the hearing is conducted before the Hearings Examiner and rules of evidence are followed. Applicants and Protestants are sworn in, testimony presented, witnesses cross-examined, etc. The hearing is recorded and the Hearing Examiner may request a transcript.

Upon review of the transcript, the Hearing Examiner passes down decision and requests a written Order be sent to all parties involved.

(D) If the application is approved, the license is sent to the applicant along with a copy of the written Order.

If the application is denied, only the written Order is sent to the applicant.

TIME INVOLVED IN PROCESSING LIQUOR APPLICATIONS

STEP 1 - 2A Minimal-follows normal transmittal time involved in mailing. License Bureau Chief reviews same day received. 1 - 3 days

STEP 2B Since processing application is continuous cycle and hearings are held every two weeks, secretaries (2) are continually scheduling, preparing Notices of Hearing and arranging publication and sending written Orders along with all other duties (principally violations which involve essentially the same procedure as an application) it is not always possible to keep up with new application daily. 2 - 7 days

STEP 3 Investigations necessarily entail leg work, personal contacts, site visits, etc. This coupled with the fact that each investigator's territory is fairly broad (9 investigators for 56 counties - approximately 6 counties each) and they are required to visit each licensed establishment in their area every 60 days (2500 licenses statewide or approximately 278 per investigator) in addition to application investigations, plus the fact that many applications require verification and return visits which necessitates at least this amount of time to do a thorough job. 14 - 30 days

STEP 4A & B Publishing requirement generally dictates the time here. (However, if applicant does not have the required documents on file at the time Investigation Bureau reports are received, the application is delayed further, as we cannot publish until file is complete.) 14 - 30 days

STEP 4C & D Minimal - Time to prepare written Order, alter our records and issue license. (Again in a contested case time may be extended as transcript may be quite lengthy and the Division must await review of proceedings by the Hearing Examiner, his decision and drafting of the written Order by Division Attorney.) 7 - 10 days

TOTAL TIME INVOLVED 38 - 80 days

(Experience has shown that the average is about 6 weeks.)

PROCESSING OF BEER LICENSES

Procedure is the same as that of processing liquor application with the exception of Steps 4B, 4C and 4D. This type of license is handled administratively. Upon receipt of Investigation Bureau's report, the Liquor Division License Bureau Chief authorizes approval or denial. Written letter is sent to applicant rather than formal Order.

Some cases involving criminal activity on part of applicant, uncovered by investigation, or other unusual circumstances, will be scheduled for hearing before the Hearings Examiner.

The time involved in processing beer applications is approximately 30 days.

* * * * * *

The subcommittee recommends no change in the law upon which this procedure is based.

D. Purchasing and Pricing of Liquor and Wine

Purchasing and pricing policies of the liquor monopoly, while not of central importance to this study, have been of interest to persons concerned with liquor law administration. This section includes information as to purchasing and pricing policies and a sample floor price schedule.

Purchasing decisions are made both by the administrator of the division and by the manager of each store. The administrator decides when to order a new label. Factors bearing on his decision are sales of the brand in other states, especially neighboring states; the incidence of special orders for the brand placed by consumers; and whether the manufacturer or distributor makes a commitment of promotional support for the new brand, advertising it in Montana newspapers and so forth. When a new label arrives, the administrator can require each Class A or Class B store to accept and stock one shipment of that label. That one shipment is ordinarily two cases to a Class A store and one case to a Class B store. The store manager decides when to reorder stock and what quantity to reorder. If a new line moves slowly in his store, he will be less likely to reorder it.

The consumer may make his own purchasing decision by placing a special order for a brand not carried in the stores. The policy of the division is to accept special orders in a minimum quantity of one case. This is a discretionary determination of the division, not one required by statute. The policy was made by the old Liquor Control Board. There is occasional consumer dissatisfaction with the limited inventory and lack of the less common, low-turnover types of liquor and wines. The special order procedure is not always a satisfactory way of meeting the problem; special liqueurs and the like are seldom desired in case lots. A case is a varying quantity -- 12 fifths or quarts, 6 half gallons, 24 pints, etc. -- depending on the brand.

Pricing is calculated according to a formula established by the board some time ago. To the price paid by the department, freight to the Helena warehouse and from the warehouse to the store is added. Then the markup is added -- a percentage varying from 30% to 82% depending upon a classification system. The highest markup, 82%, applies only to inexpensive wines. The markup is 60% on the more expensive wines, and on Scotch and Canadian whiskeys, and 40% on all domestic whiskeys and other distilled spirits except for whiskeys and other spirits made or bottled in Montana which are marked up 36%. The last category was established by the 1974 Legislature to promote domestic industries. The rationale behind the other distinctions has been forgotten.

Another price factor is the "floor price" set by the department. This is a minimum price for each type and quantity of liquor or wine, set out in the schedule below. A consequence of SB 608, the 1974 statute just referred to, is to allow the price of liquors made or bottled in the state to drop below the floor price. The Distilled Spirits Council of the United States (DISCUS), in a petition filed with the department last March, argued that the combination of floor prices and the lower mark-up was discriminatory. As an example, the Council took the $5 a quart floor price on vodka. A quart of Popov vodka costs the state $2.65, and the 40% markup plus taxes would make the price $4.45. However, the state sells Popov quarts for $5, which makes an actual markup of over 60%. A quart of Lewis and Clark vodka costing the state $2.92 and marked up at 36% will sell for $4.76 after taxes. See Appendix C for Retail Pricing Sheet.

The petition filed by DISCUS asked the department to abolish floor prices and to adopt formal regulations setting the markup percentages. The department has denied this petition. DISCUS may pursue its remedies in the courts or it may seek relief at some later time through the legislature.

The average markup is probably less in an open-market state than in Montana. There is no apparent relationship between price levels and consumption levels. Montana ranks normally among the states in per capita consumption of alcoholic beverages, so high prices have not put a damper on demand. (The rank is 25th in distilled spirits, consumption per capita, 37th for wine, and 4th among beer drinkers.) The drawback to high prices is that they may encourage Montanans to stock up on liquors and wines while visiting nearby states. For example, wine prices are much lower in Idaho than here, and the department has found taverns in western Montana selling wine purchased in Idaho.

The department considers the floor price technique to be important to the monoply. The subcommittee recommends no statutory change on the subject at this time.

Floor Price Schedule June 5, 1974

Domestic Whiskeys		Gins & Vodkas
1/2 pt.	$ 1.40	$ 1.40
1/10	2.25	2.20
pt.	2.75	2.60
1/5	4.30	4.10
qt.	5.30	5.00
1/2gal.	10.25	9.60

Scotch Whiskeys		Canadian Whiskeys	
1/10	$ 2.75	1/10	$ 2.70
1/5	5.40	pt.	3.35
1/2	12.60	1/5	5.35
		1/2	12.50

Brandies

1/5	$4.30
qt.	5.05

E. Law Enforcement

The Department of Revenue and local law enforcement officials share responsibility for enforcement of alcoholic beverage control laws. The department exercises its enforcement duties, for liquor and tax laws, through an Enforcement Bureau.

The bureau has had experience in enforcement for the Liquor Division since November 1973, hence its experience is limited. The bureau has found, however, that Title 4 enforcement sections lack clear-cut arrest authority and lack authority for thorough license investigation. Lack of arrest authority hinders department investigators. Upon observance of a violation, an investigator is required to contact a local police or sheriff's officer to make the arrest.

The subcommittee approved the department's suggestion that its investigators be given the power of arrest in enforcing the liquor laws. It is a poor policy to assign an investigator sweeping powers to search for and seize evidence, and then forbid him to arrest the violator, but such is the effect of existing law. The consensus of the subcommittee was to avoid any suggestion of a state-level general police force in the Department of Revenue, so language was included limiting authorized arrest power strictly to liquor law violations. The proposal in Section 117 would moderate the existing search and seizure sections, add a strictly limited arrest power, and help create a professional enforcement program within the department.

The subcommittee also approved a request by the Enforcement Bureau for a section prohibiting the watering or refilling of a liquor bottle. Section 118 is intended to complement federal law on this subject and enable the department to investigate complaints about watered spirits.

F. Interdiction

Interdiction is a legal mechanism by which a problem drinker can be prevented from purchasing alcoholic beverages. Sections 4-163, 4-201, 4-202, 4-203, and 4-204 as well as references in several other sections, establish interdiction procedures.

Interdiction has not been uniformly applied in the state. Examination of the files of the Liquor Division on May 16, 1974 revealed that there were fifty-three outstanding interdictions in Cascade County, four in Yellowstone County, and no interdictions in Glacier or Silver Bow Counties; but forty-two interdictions were listed for Richland County, and forty-nine were listed for Lincoln County. Surely, this data does not reflect the actual behavior patterns in the several counties.

Is interdiction a meaningful antidote to problem drinking or alcoholism? Robert L. Solomon, Administrator of the Alcohol Services Division of the Department of Health and Environmental Services, said, in a letter to the subcommittee, that the interdiction procedure is not meaningful in combating alcoholism. While interdiction may pose a stumbling block to a drinking alcoholic, it will not prevent him from drinking. He declared that, "[t]he concept is archaic, and proves to be ineffective. Conversations with the legal staff of the National Institute on Alcohol Abuse and Alcoholism and others, suggest that such references in statutes be eliminated, as they prove to be impractical in determining the impact of alcohol abuse."

The subcommittee recommends repeal or deletion of each reference to interdiction in the liquor laws.

G. Miscellaneous Revisions

The subcommittee has recommended a number of other substantive changes in policy. They are:

(1) Closing hours would be changed by removal of the Sunday morning closing law. Under the proposal, a bar must close between 2 a.m. and 8 a.m. every day of the week. (Section 47)

(2) A clarification of beer wholesalers' responsibilities has been inserted at the suggestion of the wholesalers' association. This would permit wholesalers to service and repair draft beer equipment without violating the ban on donating goods, fixtures, or services to retailer. (Section 75)

(3) Licenses for common carriers serving passengers would be administered under the same provision as for railroads and for airlines rather than under different provisions as is now the case. (Section 116)

(4) Affidavit forms could no longer be required of young adults purchasing alcoholic beverages, and the authorizing sections (4-501 through 4-505) would be repealed. The tavern association indicated that most bartenders will verify age by asking an 18-year-old to show a state liquor I.D. card; the affidavit card is seldom requested.

(5) The qualifications for obtaining a license would be revised (Section 91). The bill would delete the absolute prohibition against licensing an applicant who had ever been convicted of "keeping a house of ill fame . . . pandering, or other crime or misdemeanor opposed to decency and morality" and provide instead that an applicant's past record and present status demonstrate that he is likely to operate a bar in compliance with all applicable laws.

GENERAL REVISION AND RECODIFICATION

A bill for the recodification and general revision of the alcoholic beverage control laws embodies the subcommittee's recommendations. Most of the bill consists of the mechanical aspects of recodification: section number assignment, terminology updates, section consolidation, and section repeal. The new code would be organized in six functional chapters, so that all sections relating to a given function, e.g. license administration or state store administration, are in the same chapter. As a first step in recodification, the bill assigns section numbers to fit the reorganized Title 4. Secondly, the bill updates terminology: the bill strikes "liquor control board" and inserts "department of revenue" hundreds of times. Other references are similarly updated. Thirdly, the bill consolidates redundant sections. For example, the existing title contains twenty-two sections establishing procedures for local option elections concerning three different varieties of prohibition (liquor, beer, or taverns). One section suffices to accomplish the same goal (Section 112) and the others may be repealed without changing the law. Fourthly, the bill repeals sections made obsolete by executive reorganization or the abolition of the liquor control board. It also repeals a few archaic requirements such as the vague provision that a waiter or waitress serving beer be of good moral character (Section 4-339, R.C.M. 1947). Fifth, the bill divides a few sections that had grown very long into smaller, more readable units.

To guarantee no section has been inadvertently overlooked in the process of recodification, the staff prepared a disposition table. The table shows how each section in the present Title 4 would be disposed of in the bill.

FOOTNOTES

Chapter 105, Section 102, Laws of Montana, 1933 and Chapter 106, Section 59, Laws of Montana, 1933.

Larry D. Quinn, Politicians in Business: A History of The Liquor Control System in Montana, University of Montana Press, Missoula, Montana 59801, 1970. p.6.

"Administration of The State Liquor Monopoly." Montana Legislative Council Report No. 13, December 1964, p.1.

Quinn. p. 36.

Chapter 84, Laws of Montana, 1937.

State V. Driscoll, 101 Montana 348.

Department of Revenue, Research Division.

Chapter 255 and 226, Laws of Montana, 1947.

Chapter 217, Laws of Montana, 1963.

Quinn, Politicians in Business: A History of The Liquor Control System in Montana, (Missoula 1970), p. 78.

William A. Groff, personal communication.

LC 0001

_____ BILL NO. _____

INTRODUCED BY _____

A BILL FOR AN ACT ENTITLED: "AN ACT TO RECODIFY AND GENERALLY REVISE THE ALCOHOLIC BEVERAGE CONTROL LAWS."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 4-101, R.C.M. 1947, is renumbered section 4-1-101, and is amended to read as follows:

"~~4-101~~ 4-1-101. Citation ~~of State Liquor Control Act~~--declaration of policy--subject matters of regulation ~~under act~~. This ~~act~~ title may be cited as the "~~State Liquor Control Act of Montana~~" "Montana Alcoholic Beverage Code". It is hereby declared to be the policy of the state of Montana to effectuate and ensure the entire control of the manufacture, sale and distribution of liquor within the state of Montana as that term is defined in this code ~~in section 4-102, Revised Codes of Montana, 1947, as amended by chapter 209, laws of the thirty-first legislative assembly of Montana, in, and~~ subject to, the authority of the state of Montana through the Montana ~~liquor control board~~ department of revenue, ~~in accordance with the provisions of the State Liquor Control Act of Montana (Title 4, chapter 1, sections 4-101 through 4-171, inclusive, Revised Codes of Montana, 1947, as amended or supplemented) and in accordance with the provisions of the Retail Liquor License Act (Title 4, chapter 4, sections 4-401 through 4-441, inclusive, Revised Codes of Montana, 1947, as amended or supplemented).~~

~~It is hereby declared to be the policy of the state of Montana to effectuate and ensure that the control and regulation by the state of Montana of the manufacture, sale and distribution of beer, as that term is defined in the Montana Beer Act (Title 4, chapter 3, sections 4-301 through 4-356, inclusive, Revised Codes of Montana, 1947, as amended or supplemented) and regulated thereby, and containing four per centum (4%) of alcohol by weight or less, and the incidents of such manufacture, sale and distribution of such beer, shall continue subject to, and be effectuated exclusively under, the provisions of the Montana Beer Act, as amended or supplemented, and not under the provisions of the State Liquor Control Act of Montana. The terms "beer" and "malt liquor" whenever used as a subject of regulation and control by and under the state liquor Control Act of Montana shall refer to, and be construed as applicable only to beer, ale, porter, stout or other malt liquors containing more than four per centum (4%) of alcohol by weight, and such beer, ale, porter, stout and malt liquors containing more than four per centum (4%) of alcohol by weight, are hereby classified and defined as "liquor" and shall be subject to regulation and control under the [illegible]~~

APPENDIX A

~~or--the--State--liquor--Control-Act-of-Montana-as-amended-or supplemented,-and-not-under-the-provisions--of--the--Montana Beer--Act,-as-amended-or-supplemented.--The-said-acts-herein referred-to-shall-be-deemed~~ This code is an exercise of the police power of the state, in, and for the protection, of the welfare, health, peace, morals and safety of the people of the state and their provisions shall be construed for the accomplishment of such purposes."

Section 2. Section 4-103, R.C.M. 1947, is renumbered section 4-1-105, and is amended to read as follows:

"~~4-103~~ 4-1-105. Divisions of ~~act~~ code. This ~~act~~ code is divided into six ~~parts~~ chapters. ~~Part-II~~ Chapter 1 relates to the ~~creation--of--a--board~~ authority of the department of revenue to administer this act and the powers and functions of the ~~board~~ department. ~~Part-II~~ Chapter 2 relates to the establishment of state stores and the keeping and selling of liquors. ~~Part-III~~ Chapter 3 relates to the ~~formation--of--"local--option--areas"--and--the--holding--of election-therein~~ control of liquor, wine, and beer. ~~Part IV~~ Chapter 4 relates to ~~prohibitions,--interdiction, penalties-and-procedure-on-prosecution-and-on-appeal~~ license administration. ~~Part--V~~ Chapter 5 relates to ~~property acquired--by--the-board,-and-the-financing-and-accounting-by the-board-and--application--of--the--profits~~ identification cards. ~~Part---VI~~ Chapter 6 relates to ~~general--and~~

~~miscellaneous-matters~~ enforcement."

Section 3. Section 4-107, R.C.M. 1947, is renumbered section 4-1-301, and is amended to read as follows:

"~~4-107~~ 4-1-301. General powers and duties of the ~~board~~ department. The ~~board~~ department of revenue shall have the powers and duties ~~herein-specified-and-the-administration-of~~ to administer the ~~State-liquor-Control-Act--of~~ Montana ~~and the-Montana-Beer-Code~~ Alcoholic Beverage Code, including the general control, management and supervision of all state liquor stores,~~but-the-board-is-authorized--to--delegate--to the---state---liquor---administrator--the--general--control, management-and--supervision--of--all--state--liquor--stores, including--the--power--to-purchase-supplies-for-same-and-the power-to-hire-and-discharge-employees-of-the-board,-subject, however,-to-such-regulations-and-restrictions-as--the--board may-impose-upon-the-state-liquor-administrator.~~"

Section 4. Section 4-109, R.C.M. 1947, is renumbered section 4-1-307, and is amended to read as follows:

"~~4-109~~ 4-1-307. Principal office of ~~board~~ department of revenue. The principal office of the ~~board~~ department of revenue shall be in the city of Helena."

Section 5. Section 4-112, R.C.M. 1947, is renumbered section 4-1-302, and is amended to read as follows:

"~~4-112~~ 4-1-302. Functions, powers and duties of ~~board~~ department of revenue. The ~~board~~ department of revenue shall

have the following functions, duties and powers:

(a) To buy, import, and have in its possession for sale, and sell, liquors, in the manner set forth in this ~~act~~ code;

(b) To control the possession, sale and delivery of liquors in accordance with the provisions of this ~~act~~ code;

(c) To determine the municipalities within which state liquor stores shall be established throughout the state, and the situation of the stores within every such municipality;

(d) To lease, furnish and equip any building or land required for the operation of this ~~act~~ code;

(e) To buy or lease all plant and equipment it may consider necessary and useful in carrying into effect the objects and purposes of this ~~act~~ code;

(f) To ~~appoint vendors~~ employ store managers, and also every officer, ~~inspector~~ investigator, clerk or other employee, required for the operation or carrying out of this ~~act~~ code, and to dismiss the same, fix their salaries or remuneration, assign them their title, define their respective duties and powers, and to engage the service of experts and persons engaged in the practice of a profession, if deemed expedient;

(g) To determine the nature, form and capacity of all packages to be used for containing liquor kept or sold under this ~~act~~ code; ~~provided--that--all--spirituous--and--vinous~~

~~liquors---shall--be--purchased--and--sold--only--in--bottles containers-in-the-original-packages,-and-not-in--barrels--or bulk,-it-being-the-intent-and-purpose-of-this-act-to-prevent the-rectification-or-dilution-of-such-liquors;~~

(h) To grant and issue licenses under and in pursuance to this ~~act~~ code;

(i) Without in any way limiting, or being limited by the foregoing, to do all such things as are deemed necessary or advisable by the ~~board~~ department for the purpose of carrying into effect the provisions of this ~~act~~ code, or the regulations made thereunder."

Section 6. Section 4-113, R.C.M. 1947, is renumbered section 4-1-303, and is amended to read as follows:

"~~4-113~~ 4-1-303. Regulations may be made by ~~board~~ department of revenue--scope of regulations. (1) The ~~board~~ department of revenue may make such regulations, not inconsistent with this ~~act~~ code, as to the ~~board~~ department of revenue seem necessary, for carrying out the provisions of this ~~act~~ code, and for the efficient administration thereof.

(2) Without thereby limiting the generality of the provisions contained in subsection (1) hereof, it is declared the power of the ~~board~~ department to make regulations in the manner set out in that subsection shall extend to and include the following:

(a) Regulating the equipment and management of state stores and warehouses in which liquor is kept or sold and prescribing the books and records to be kept therein;

(b) Prescribing the duties of the ~~officers, clerks and servants~~ employees of the ~~board~~ liquor division, and regulating their conduct while in the discharge of their duties;

(c) Governing the purchase of liquor and the furnishing of liquor to state stores established under this ~~act~~ code;

(d) Determining the classes, varieties and brands of liquor to be kept for sale at any state store;

(e) Prescribing, subject to this ~~act~~ code, the days and hours during which state liquor stores ~~and hotels~~, and ~~clubs~~ retail establishments ~~licensed to sell beer under this act~~ shall be kept open for the sale of ~~liquor~~ alcoholic beverages;

(f) Providing for the issuing and distributing of price lists showing the price to be paid by purchasers for each class, variety or brand of liquor kept for sale under this ~~act~~ code;

(g) Prescribing an official ~~serially-numbered~~ seal which shall be attached to every package of liquor sold or sealed under this ~~act~~ code;

(h) Prescribing forms to be used for the purpose of

this ~~act~~ code or of the regulations made thereunder, and the terms and conditions in permits and licenses issued and granted under this ~~act~~ code;

~~(i) Prescribing the kinds and quantities of liquor which may be purchased under permits of any class, including the quantity which may be purchased at any one time or within any specified period of time;~~

~~(j)~~ (i) Prescribing the form of records of purchase of liquor, and the reports to be made thereon to the board, and providing for inspection of the records so kept;

~~(k)~~ (j) Prescribing the manner of giving and serving notices required by this ~~act~~ code or the regulations thereunder;

~~(l)~~ (k) Prescribing the fees payable in respect of permits and licenses issued under this ~~act~~ code for which no fees are prescribed in this ~~act~~ code, and prescribing the fees for anything done or permitted to be done under the regulations made thereunder;

~~(m) Prescribing, subject to the provisions of this act, any advertisement of the application, if required by the board and the conditions and qualifications necessary for the obtaining of club licenses and the books and records to be kept and the returns to be made by clubs, and the number of licensed clubs in any municipality, and providing for the inspection of clubs;~~

~~(n)~~ (l) Prescribing, subject to the provisions of this ~~act~~ code, the conditions and qualifications necessary for the obtaining of a liquor or beer license, and the books and records to be kept and the returns to be made by the licensees and ~~the--number-of-such-licensed-premises-in-any municipality--and~~ providing for the inspection of such licensed premises;

~~(o)~~ (m) Specifying and describing the place and the manner in which liquor or beer may be lawfully kept or stored;

~~(p)~~ (n) Specifying and regulating the time and periods when, and the manner, methods and means by which, vendors and brewers shall deliver liquor under this ~~act~~ code, and the time and periods when, and the manner, methods and means by which liquor, under this ~~act~~ code, may be lawfully conveyed or carried;

~~(q)~~ (o) Governing the conduct, management and equipment of any premises licensed to sell liquor or beer under this ~~act~~ code;

~~(r)--Subject--to--this---act,---to---make---regulations respecting--the--sale--and--consumption--of--beer-in-a-club, holding-a-club-license;~~

~~(s)~~ (p) Providing for the imposition and collection of ~~the-tax-to--be--collected--or--levied--under--section--4-147 (4-317),~~ taxes and making regulations respecting returns, ~~to~~

~~be--made--by--a--brewer,--and--respecting-the~~ accounting and payment~~,-by-a-brewer~~ to the ~~board,~~ department of revenue of the ~~tax,~~ taxes ~~to--be-collected-by-him-under-said-section 4-147-(4-317)~~.

(3) Whenever it is provided in this ~~act~~ code that any act, matter or thing, may be done, if permitted or authorized by the regulations, or may be done in accordance with the regulations or as provided by the regulations, the ~~board~~ department of revenue, subject to the restrictions set out in subsection (1) hereof, shall have the power to make regulations respecting such act, matter or thing."

Section 7. Section 4-114, R.C.M. 1947, is renumbered section 4-2-101, and is amended to read as follows:

"~~4-114~~ 4-2-101. Establishment of state liquor stores--hours--kinds and prices of liquor. The ~~board~~ department of revenue shall establish and maintain at the county seats and such other places as the ~~board~~ department deems advisable, one or more stores to be known as "state liquor stores," for the sale of liquor in accordance with the provisions of this ~~act~~ code and the regulations made thereunder; the stores shall be classified according to the volume of business which each store does each fiscal year; the volume of business to be used in figuring each store's classification shall be the volume of business done by the store to be classified during the immediate past fiscal year; stores

shall be classified as follows: stores having done a business of four hundred and fifty thousand dollars ($450,000) or over during the immediate past fiscal year shall be "Class A" stores; stores having done a business of one hundred and forty thousand dollars ($140,000) and up to four hundred and fifty thousand dollars ($450,000) during the immediate past fiscal year shall be "Class B" stores; and all stores having done a business of less than one hundred and forty thousand dollars ($140,000) during the immediate past fiscal year shall be "Class C" stores; in opening new stores the ~~board~~ department shall estimate the volume of business which said store will do the first year and classify said store according to the estimate of business; the ~~board~~ department shall contract or employ the necessary help to operate said stores and shall designate the duties to be performed by the agent or employees; the ~~board~~ department may, from time to time, fix the prices at which the various classes, varieties and brands of liquor may be sold, and prices shall be the same at all state stores. Such state liquor stores shall be and remain open during such period of the day as the ~~board~~ department shall deem advisable, provided, however, that such stores shall be closed for the transaction of business between the close of normal business Saturday p.m. ~~through~~ up to the opening of normal business Tuesday a.m. as set by ~~board~~ department

regulation and including legal holidays ~~and sundays and days~~."

Section 8. Section 4-116, R.C.M. 1947, is renumbered section 4-2-106, and is amended to read as follows:

"~~4-116~~ 4-2-106. Provisions concerning sale of liquor ~~and beer by vendors~~. A ~~vendor~~ store manager may sell to any person such liquor as that person is entitled to purchase in conformity with the provisions of this ~~act~~ code and the regulations made thereunder, provided that no delivery shall take place until the purchaser has paid the purchase price."

Section 9. Section 4-117, R.C.M. 1947, is renumbered section 4-2-201, and is amended to read as follows:

"~~4-117~~ 4-2-201. No reduction for quantity sales of liquor. No reductions shall be made by the ~~Montana liquor control board~~ department for sales of liquor in quantity."

Section 10. Section 4-120, R.C.M. 1947, is renumbered section 4-2-107, and is amended to read as follows:

"~~4-120~~ 4-2-107. Liquor not to be consumed on premises of state store. No officer, clerk or servant of the ~~board~~ department, employed in the state store, shall allow any liquor to be consumed on the premises of a state store, nor shall any person consume any liquor on such premises."

Section 11. Section 4-121, R.C.M. 1947, is renumbered section 4-2-104, and is amended to read as follows:

"~~4-121~~ 4-2-104. When sales of liquor forbidden. No sale or delivery of liquor shall be made on or from the

premises of any state liquor store, nor shall any store be open for the sale of liquor

(a) on any holiday recognized by state law;

~~(b) on any day on which polling takes place at any national or state election held in the electoral district in which the store is situated;~~

~~(c) on any day on which polling takes place at any municipal election held in the municipality in which the store is situated;~~

~~(d)~~ (b) during such other period and on such other days as the ~~board~~ department may direct."

Section 12. Section 4-122, R.C.M. 1947, is renumbered section 4-2-103, and is amended to read as follows:

"~~4-122~~ 4-2-103. Conveyance of liquors--opening liquor during transit forbidden. It shall be lawful to carry or convey liquor to any state store, and to and from any warehouse or depot established by the ~~board~~ department for the purposes of this ~~act~~ code, and when permitted so to do by this ~~act~~ code and the regulations made thereunder, and in accordance therewith, it shall be lawful for any common carrier, or other person, to carry or convey liquor sold by a vendor from a state store, or beer, when lawfully sold by a brewer, from the premises wherein such beer was manufactured, or from premises where the beer may be lawfully kept and sold, to any place to which the same may

be lawfully delivered under this ~~act~~ code, and the regulations made thereunder;

Provided that no such common carrier or any other person, shall open, or break, or allow to be opened or broken, any package or vessel containing liquor, or drink or use, or allow to be drunk or used, any liquor therefrom, while being so carried or conveyed."

Section 13. Section 4-139, R.C.M. 1947, is renumbered section 4-1-205, and is amended to read as follows:

"~~4-139~~ 4-1-205. ~~Hospitals--and--sanitariums~~ Licensed hospital or health care facility -- restrictions -- violations. Any person in charge of an institution regularly conducted as a ~~hospital--or--sanitarium--for--the care of persons in ill health, or as a home devoted--exclusively--to the--care--of--aged--people~~ licensed hospital or health care facility, may administer liquor purchased by him to any patient or inmate of the institution ~~who is in need of the same, either by way of external application or otherwise for emergency medical purposes,~~ and may charge for the liquor so administered; but no liquor shall be administered by any person under this section except to bona fide patients or inmates of the institution of which he is in charge ~~and--in cases--of--actual--need,~~ and every person in charge of an institution who administers liquor in evasion or violation of this ~~act~~ code shall be guilty of an offense against this

~~act~~ code."

Section 14. Section 4-140, R.C.M. 1947, is renumbered section 4-1-202, and is amended to read as follows:

"~~4-140~~ 4-1-202. Application of ~~act~~ code. (1) Nothing in this ~~act~~ code shall prevent any brewer, distiller, or other person duly licensed, under the provisions of any statute of the United States of America, for the manufacture of liquor, from having or keeping liquor in a place and in the manner authorized by or under any such statute.

It is hereby declared to be the policy of the state of Montana that the manufacture of liquor including the distillation, rectification, bottling and processing as these terms are defined under the provisions of the laws of the United States shall be authorized and permitted by any brewer, distiller, rectifier or other person duly licensed under any provision of any statute of the United States of America in a place and in the manner authorized by or under any statute of the United States provided the Montana state ~~liquor--control--board~~ department of revenue may make such regulations as the ~~board--deem~~ department deems necessary with respect thereto, not inconsistent with this ~~act~~ code, or with the statutes of the United States of America or regulations issued under the provisions of the federal Alcohol Administration Act, title 27, United States Code sections 201 through 212 inclusive or regulations issued

under the provisions of the Internal Revenue Code, title 26, United States Code, sections 5001 through ~~section~~ 5693, inclusive.

(2) Nothing in this ~~act~~ code shall prevent--

(a) The sale of liquor by any person to the ~~board~~ department;

(b) The purchase, importation and sale of liquor by the ~~board~~ department for the purposes of and in accordance with this ~~act~~ code."

Section 15. Section 4-141, R.C.M. 1947, is renumbered section 4-1-203, and is amended to read as follows:

"~~4-141~~ 4-1-203. Preparations not subject to ~~act~~ code. (1) Subject to the provisions of this section, nothing in this ~~act~~ code shall, by reason only that such preparation contains alcohol, prevent the manufacture, sale, purchase or consumption--

(a) of any extract, essence or tincture or other preparation containing alcohol, which is prepared according to a formula of the United States Pharmacopoeia, or according to a formula approved of by the ~~board~~ department; or

(b) of any proprietary or patent medicine prepared according to a formula approved of by the ~~board~~ department.

(2) The ~~board~~ department, if of opinion that any such proprietary or patent medicine, extract, essence, tincture

or preparation which contains alcohol, or any other preparation of a solid, semisolid or liquid nature containing alcohol which, or any extract from which, can be used as a beverage or as the ingredient of any beverage, may prohibit the sale thereof by retail within the state, or the possession of the same for sale by retail within the state, except by a state liquor store, or by persons duly licensed by the ~~board~~ department to keep and sell the same by retail in accordance with this act and the regulations made thereunder.

(3) The ~~board~~ department shall notify the manufacturer or vendor of such proprietary or patent medicine, extract, essence, tincture or preparation, of the said prohibition and from and after the date of such notification any person within the state selling or keeping for sale any such proprietary or patent medicine, extract, essence, tincture or preparation so prohibited as aforesaid shall be guilty of an offense under this ~~act~~ code."

Section 16. Section 4-150, R.C.M. 1947, is renumbered section 4-1-201, and is amended to read as follows:

"~~4-150~~ 4-1-201. Sale of liquor, ~~unlawful, when--foreign-substance-in-liquor--forbidden~~--possession of liquor, when unlawful. (1) Except as provided by this ~~act~~ code, no person shall, within the state, by himself, his clerk, servant, or agent, expose or keep for sale, or

directly or indirectly or upon any pretense, or upon any device, sell, or offer to sell, or in consideration of the purchase or transfer of any property, or for any other consideration, or at the time of the transfer of any property, give to any other person any liquor.

~~(2) No person shall have, keep or sell any beer, or malt liquor, to which has been added any foreign substance.~~

~~(3)~~ (2) No person shall have or keep any liquor within the state which has not been purchased from ~~a~~ the state ~~vendor~~ of ~~the~~ Montana ~~liquor control board or from a druggist authorized to sell the same~~; provided, however, that nothing in this ~~act~~ code shall prohibit any person entering this state from any other state, or from any foreign country, from having in his possession not to exceed ~~one (1)~~ three (3) wine ~~gallon~~ gallons of alcoholic liquor or beer, which liquor or beer shall have been purchased in another state or foreign country but no person claiming to have so entered the state, shall at any time, have in his possession more than ~~one (1)~~ three (3) wine ~~gallon~~ gallons of intoxicating liquor which shall not have been purchased from a state liquor store. This subsection shall not apply to the ~~board~~ department or to the keeping or having of liquor by brewers, distillers and other persons duly licensed by the United States for the manufacture of such liquor; nor to the keeping or having of any proprietary or

patent medicines or of any extracts, essences, tinctures or preparations where such having and keeping is authorized by this ~~act~~ code.

~~(4)~~ (3) Nothing contained in this section shall apply to the possession by a sheriff or his bailiff of liquor seized under execution or other judicial or extra-judicial process nor to sales under executions or other judicial or extra-judicial process to the ~~board~~ department, or in the case of beer to a brewer, beer licensee, club licensee or canteen licensee."

Section 17. Section 4-152, R.C.M. 1947, is renumbered section 4-2-105, and is amended to read as follows:

"~~4-152~~ 4-2-105. Place and time of selling liquor. No ~~vendor~~ store manager, and no person acting as the clerk or servant of or in any capacity for any ~~vendor~~ manager, shall sell liquor in any other place or at any other time or otherwise than as authorized by this ~~act~~ code and the regulations."

Section 18. Section 4-153, R.C.M. 1947, is renumbered section 4-1-304, and is amended to read as follows:

"~~4-153~~ 4-1-304. ~~Board----members~~ Liquor division employees not to be interested in liquor sales--unlawful to give or receive gift, commission or remuneration. (1) No ~~member~~ officer or employee of the ~~board~~ liquor division shall be directly or indirectly interested or engaged in any

other business or undertaking dealing in liquor, whether as owner, part owner, partner, member of syndicate, shareholder, agent or employee, and whether for his own benefit or in a fiduciary capacity for some other person.

(2) No member or employee of the ~~board~~ division or any employee of the state shall solicit or receive directly or indirectly any commission, remuneration or gift whatsoever from any person or corporation having sold, selling or offering liquor for sale to the state or ~~board~~ division in pursuance of this ~~act~~ code.

(3) No person selling or offering for sale to, or purchasing liquor from, the state ~~or--the--board~~ liquor division, shall either directly or indirectly offer to pay any commission, profit or remuneration, or make any gift to any member or employee of the ~~board~~ division or to any employee of the state, or to anyone on behalf of such member or employee.

(4) The prohibition contained in subsection (3) of this section does not prohibit the ~~board~~ division from receiving samples of liquor for the purpose of chemical testing, subject to the following limitations:

(a) Each manufacturer, distiller, compounder, rectifier, importer, or wholesale distributor, or any other person, firm, or corporation proposing to sell any spirituous liquors to the Montana liquor ~~control--board~~

division shall submit, without cost to the ~~board~~ division prior to the original purchase, an analysis of each brand and may submit a representative sample not exceeding twenty-five (25) fluid ounces of such merchandise to the board.

(b) It shall be the duty of the ~~board~~ division, when a brand of liquor has been accepted for testing by the ~~board~~ division, to forward the sample, unopened and in its entirety, to a qualified chemical laboratory for analysis.

(c) The ~~board~~ division shall maintain written records of all samples received; such records shall show the brand name, amount and from whom received, date received, the laboratory or chemist to whom forwarded, the ~~board's~~ division's action on the brand, and the person to whom delivered or other final disposition of the sample.

(5) No liquor, wine, or other spirituous beverage shall be withdrawn from the regular warehouse inventory or from the state liquor stores of the Montana liquor ~~control board~~ division, for any purpose whatsoever other than by sale at the prevailing state retail prices, or for destroying damaged or defective merchandise. The ~~board~~ division shall maintain a written record including the type, brand, and container size; number of bottles or other units; signatures of witnesses; and method of destruction or other disposition of damaged or defective warehouse or state store

merchandise."

Section 19. Section 4-154, R.C.M. 1947, is renumbered section 4-6-101, and is amended to read as follows:

"~~4-154~~ 4-6-101. Transfer of ~~liquor~~ alcoholic beverages except as provided by ~~act~~ code unlawful. Except as provided in this ~~act~~ code, no person shall, within the state, by himself, his clerk, servant, or agent, attempt to purchase, or directly or indirectly or upon any pretense or upon any device, purchase, or in consideration of the sale or transfer of any property, or for any other consideration, or at the time of the transfer of any property, take or accept from any other person any ~~liquor~~ alcoholic beverage."

Section 20. Section 4-156, R.C.M. 1947, is renumbered section 4-6-106, and is amended to read as follows:

"~~4-156~~ 4-6-106. Consumption of ~~liquor~~ alcoholic beverage on druggists' premises prohibited. No person, within the state of Montana, shall consume any ~~liquor~~ alcoholic beverage on any premises where ~~liquor~~ an alcoholic beverage is kept for sale by a druggist, nor shall any druggist permit any ~~liquor~~ alcoholic beverage to be consumed on such premises."

Section 21. Section 4-158, R.C.M. 1947, is renumbered section 4-3-102, and is amended to read as follows:

"~~4-158~~ 4-3-102. Liquor container must have been sealed with official seal~~--powers--and--duties-of-peace-officers~~.

~~(1)~~ Except in the case of--

(a) liquor imported by the state, or by the ~~board~~ department; or

(b) liquor had and kept by a person, and in a place and manner referred to in section ~~4-140~~ 4-1-202; or

(c) beer and malt liquor, lawfully had or kept under this ~~act~~ code; or

(d) any liquor kept for sale by a druggist under ~~section--4-134~~ this code no liquor shall be kept or had by any person within the state unless the package, not including a decanter or other receptacle containing the liquor for immediate consumption, in which the liquor is contained has, while containing that liquor, been sealed with the official seal prescribed under this ~~act~~ code.

~~(2)--Any inspector or peace officer who finds liquor, which he has reasonable cause to believe is had or kept by any person in violation of the provisions of this act, may without warrant, forthwith seize and remove the same and the packages in which the liquor is kept, and upon conviction of the person for a violation of any provision of this section the liquor and all packages containing the same shall, in addition to any other penalty prescribed by this act, ipso facto be forfeited to the state of Montana.~~"

Section 22. There is a new section to be numbered 4-6-205, R.C.M. 1947, which reads as follows:

4-6-205. Unlawful alcoholic beverage -- seizure -- forfeiture. Any investigator or peace officer who finds an alcoholic beverage, which he has reasonable cause to believe is had or kept by any person in violation of the provisions of this code, may forthwith seize and remove the same and the packages in which the alcoholic beverage is kept, and upon conviction of the person for a violation of any provision of this section the alcoholic beverage and all packages containing the same shall, in addition to any other penalty prescribed by this code, ipso facto be forfeited to the state of Montana.

Section 23. Section 4-160, R.C.M. 1947, is renumbered section 4-6-103, and is amended to read as follows:

"~~4-160~~ 4-6-103. ~~Sales to intoxicated persons~~ Providing alcoholic beverage prohibited. (1) No ~~vendor~~ store manager, ~~beer~~ retail licensee, ~~or club licensee~~, nor any employee of a ~~vendor~~ store manager, ~~beer~~ or retail licensee, ~~or club licensee, shall~~ may sell any ~~liquor~~ alcoholic beverage, or permit any ~~liquor~~ alcoholic beverage to be sold, to any person apparently under the influence of ~~liquor~~ an alcoholic beverage.

(2) No person may give an alcoholic beverage to a person apparently under the influence of alcohol."

Section 24. Section 4-161, R.C.M. 1947, is renumbered section 4-6-104, and is amended to read as follows:

"~~4-161~~ 4-6-104. Age limit for sale of ~~liquor~~ alcoholic beverages. Except in the case of ~~liquor~~ an alcoholic beverage given to a person under the age of eighteen (18) years by his parent or guardian for beverage or medicinal purposes, or administered to him by his physician or dentist for medicinal purposes, or sold to him by a vendor or druggist upon the prescription of a physician, no person shall sell, give, or otherwise supply ~~liquor~~ an alcoholic beverage to any person under the age of eighteen (18) years, or permit any person under that age to consume ~~liquor~~ an alcoholic beverage."

Section 25. Section 4-203, R.C.M. 1947, is renumbered section 4-6-203, and is amended to read as follows:

"~~4-203~~ 4-6-203. Search warrants--issuance. ~~(1)~~ Upon information on oath by any ~~inspector~~ investigator appointed under this ~~act~~ code or by any peace officer showing reasonable cause to believe that ~~liquor--is~~ alcoholic beverages are unlawfully kept or had, or kept or had for unlawful purposes, in any building or premises, it shall be lawful for any ~~justice~~ court by warrant ~~under--his--hand~~ to authorize and empower the ~~inspector~~ investigator or peace officer, or any other person named therein, to enter and search the building or premises and every part thereof; and for that purpose to break open any door, lock, or fastening of the building or premises or any part thereof, or any

closet, cupboard, box, or other receptacle therein which might contain ~~liquor~~ alcoholic beverages."

Section 26. Section 4-209, R.C.M. 1947, is renumbered section 4-6-207, and is amended to read as follows:

"~~4-209~~ 4-6-207. Seizure of ~~liquor~~ alcoholic beverage and conveyance--forfeiture of conveyance and ~~liquor~~ alcoholic beverage to state. Whenever an ~~inspector--of~~ investigator or any peace officer in making or attempting to make a search under and in pursuance of authority of law, shall find in any motor vehicle, motor car, automobile, vessel, boat, canoe or conveyance of any description ~~liquor~~ an alcoholic beverage which is unlawfully kept or had, or kept or held for unlawful purposes contrary to the provisions of this ~~act~~ code, he may forthwith seize the ~~liquor~~ alcoholic beverage and packages in which the same is contained, and the motor vehicle, motor car, automobile, vessel, boat, canoe or conveyance in which ~~such--liquor~~ the alcoholic beverage is found; and upon the conviction of the occupant or person in charge of the vehicle, motor car, automobile, vessel, boat, canoe or conveyance, or of any other person, for having or keeping such ~~liquors~~ alcoholic beverages contrary to any of the provisions of this ~~act~~ code in any such vehicle, motor car, automobile, vessel, boat, canoe or conveyance, the court in which the conviction of any such person is had may, in addition to the sentence

imposed under authority of law, declare the ~~liquor~~ alcoholic beverage or any part thereof so seized, and the package in which the same is contained, to be forfeited to the state of Montana; and the court may in and by decree, further declare the vehicle, motor car, automobile, vessel, boat, canoe or conveyance so seized to be forfeited to the state of Montana."

Section 27. Section 4-210, R.C.M. 1947, is renumbered section 4-6-208, and is amended to read as follows:

"~~4-210~~ 4-6-208. Force may be used in seizure of ~~liquor~~ alcoholic beverages, when--retention of seized ~~liquor~~ alcoholic beverage--forfeiture--hearing. (1) Where ~~liquor~~ alcoholic beverage is found by any ~~inspector~~ investigator or peace officer on any premises or in any place in such quantities as to satisfy the ~~inspector~~ investigator or peace officer that such ~~liquor~~ alcoholic beverage is being had or kept contrary to any of the provisions of this ~~act~~ code, it shall be lawful for the ~~inspector~~ investigator or peace officer to forthwith seize and remove, by force if necessary, any ~~liquor~~ alcoholic beverage so found, and the packages in which the ~~liquor~~ alcoholic beverage was had or kept and immediately turn said ~~liquor~~ alcoholic beverage over to the Montana ~~liquor--control--board~~ department of revenue.

(2) The Montana ~~liquor--control--board~~ department of

revenue shall commence an action in the district court of the county in which the ~~liquor~~ alcoholic beverage is found and seized against said ~~liquor~~ alcoholic beverage and the person or persons actually or apparently in possession or control thereof if any such person be present at the time of the seizure. The ~~said liquor~~ alcoholic beverage shall be named as one of the defendants to said action.

(3) The complaint shall show the date and place of seizure, the name of the person or persons actually or apparently in possession or control thereof if any such person be present at the time of the seizure, the reasons the Montana ~~liquor--control--board~~ department of revenue claims the right to the possession of ~~said--liquor~~ the alcoholic beverage and shall demand that all persons who claim any right to the possession of ~~said--liquor~~ the alcoholic beverage shall show the nature of their claim or claims and that the court declare ~~said liquor~~ the alcoholic beverage contraband and that the court order ~~said--liquor~~ alcoholic beverage be forfeited to the state of Montana.

(4) Summons shall be issued, served or published as in other civil actions provided by Title 93, except that the summons shall be published in the county where ~~said--liquor~~ the alcoholic beverage was seized if a newspaper is published in said county.

(5) In all actions brought under this ~~act~~ code, proof

of the absence of the official seal of the Montana ~~liquor control--board~~ department of revenue upon the bottle, jug, package, container or containers of ~~such liquor~~ an alcoholic beverage on which a seal is required shall be prima facie [illegible] ~~contraband~~ [illegible] alcoholic beverage as contraband liquor and prima facie evidence of unlawful possession thereof in the defendants and each of them and in [illegible] ~~the Montana liquor control board~~ department of revenue, and the court shall order all such ~~liquor~~ alcoholic beverage contraband and forfeited to the state of Montana."

Section 28. Section 4-211, R.C.M. 1947, is renumbered section 4-6-209, and is amended to read as follows:

"~~4-211~~ 4-6-209. Disposal of forfeited ~~liquor~~ alcoholic beverage--report by officers of seizure. (1) In every case in which a court makes any order for the forfeiture of ~~liquor~~ alcoholic beverages under any of the provisions of this act, and in every case in which any claimant to ~~liquor~~ an alcoholic beverage under the provisions of section ~~4-210~~ 4-6-207, fails to establish his claim and right thereto, the ~~liquor~~ alcoholic beverage in question and the packages in which the ~~liquor~~ alcoholic beverage is kept shall forthwith be delivered to the ~~board~~ department. The ~~board~~ department shall thereupon, determine the market value of all forfeited ~~liquor~~ alcoholic beverage which is found to be suitable for

sale in the state liquor stores, and the ~~board~~ department shall pay the amount so determined to the state treasurer, [illegible] ~~the board~~ department for transportation [illegible] ~~liquor~~ alcoholic beverage to the state liquor warehouse, and the ~~liquor~~ alcoholic beverage suitable for sale shall be taken into stock by the ~~board~~ department and sold under the provisions of this ~~act~~ code. All forfeited ~~liquor~~ alcoholic beverage which is found to be unsuitable for sale in state liquor stores shall be destroyed under competent supervision as may from time to time be directed by the ~~board~~ department.

(2) In every case in which ~~liquor~~ an alcoholic beverage is seized by a peace officer it shall be his duty to forthwith make or cause to be made to the ~~board~~ department a report in writing, of the particulars of such seizure."

Section 29. Section 4-212, R.C.M. 1947, is renumbered section 4-6-210, and is amended to read as follows:

"~~4-212~~ 4-6-210. Inspection of carriers' records--when authorized. For the purpose of obtaining information concerning any matter relating to the administration or enforcement of this ~~act~~ code, the ~~board~~ department or any person appointed by it in writing for the purpose may inspect the freight and express books and records, and all waybills, bills of lading, receipts, and documents in the

possession of any railway company, express company, or other common carrier doing business within the state containing any information or record relating to any goods shipped or carried or consigned or received for shipment or carriage within the state."

Section 30. Section 4-213, R.C.M. 1947, is renumbered section 4-6-211, and is amended to read as follows:

"~~4-213~~ 4-6-211. Unlawful for carrier to refuse inspection of records. Every railway company, express company, or common carrier, and every officer or employee of any such company or common carrier, who neglects or refuses to produce and submit for inspection any book, record, or document referred to in the next preceding section when requested to do so by the ~~board~~ department or by a person so appointed by it shall be guilty of an offense against this ~~act~~ code."

Section 31. Section 4-214, R.C.M. 1947, is renumbered section 4-6-303, and is amended to read as follows:

"~~4-214~~ 4-6-303. Description of offense--sufficiency of. In describing the offense respecting the sale or keeping for sale or other disposal of ~~liquor~~ alcoholic beverages, or the having, keeping, giving, purchasing or the consumption of ~~liquor~~ alcoholic beverages in any information, summons, conviction, warrant, or proceeding under this ~~act~~ code, it shall be sufficient to state the

sale or keeping for sale or disposal, having, keeping, giving, purchasing, or consumption of ~~liquor~~ alcoholic beverages, simply without stating the name or kind of such ~~liquor~~ alcoholic beverage or the price thereof, or any person to whom it was sold or disposed of, or by whom it was taken or consumed, or from whom it was purchased or received, and it shall not be necessary to state the quantity of ~~liquor~~ alcoholic beverage so sold, kept for sale, disposed of, had, kept, given, purchased, or consumed, except in the case of offenses where the quantity is essential, and then it shall be sufficient to allege the sale or disposal of more or less than such quantity."

Section 32. Section 4-215, R.C.M. 1947, is renumbered section 4-6-304, and is amended to read as follows:

"~~4-215~~ 4-6-304. Description of offense--sufficiency--defenses need not be negatived. The description of any offense under this ~~act~~ code, in the words of this ~~act~~ code or in any words of like effect, shall be sufficient in law; and any exception, exemption, provision, excuse, or qualification, whether it occurs by way of proviso or in the description of the offense in this ~~act~~ code, may be proved by the defendant, but need not be specified or negatived in the information or complaint; but if it is so specified or negatived, no proof in relation to the matter so specified nor negatived shall be required on the part of the informant

[illegible] claimant."

Section 33. Section 4-216, R.C.M. 1947, is renumbered section 4-6-305, and is amended to read as follows:

"~~4-216~~ 4-6-305. Sufficiency of evidence. In any prosecution under this ~~act~~ code for the sale or keeping for sale or other disposal of ~~liquor~~ alcoholic beverages, or the having, keeping, giving, purchasing, or consuming of ~~liquor~~ alcoholic beverages, it shall not be necessary that any witness should depose to the precise description or quantity of the ~~liquor~~ alcoholic beverages sold, disposed of, kept, had, given, purchased, or consumed, or the precise consideration (if any) received therefor, or to the fact of the sale or other disposal having taken place with his participation or to his own personal or certain knowledge; but conviction may be based upon circumstantial evidence reasonably tending to establish the guilt of the accused beyond a reasonable doubt."

Section 34. Section 4-217, R.C.M. 1947, is renumbered section 4-6-306, and is amended to read as follows:

"~~4-217~~ 4-6-306. Proof of violation--sufficiency. In proving the sale, disposal, gift, or purchase, gratuitous or otherwise, or consumption of ~~liquor~~ alcoholic beverages, it shall not be necessary in any prosecution to show that any money actually passed or any ~~liquor~~ alcoholic beverages was actually consumed, if the court hearing the case is

satisfied that a transaction in the nature of a sale, disposal, gift, or purchase actually took place, or that any consumption of ~~liquor~~ alcoholic beverages was about to take place; and proof of consumption or intended consumption of ~~liquor~~ alcoholic beverages on premises on which such consumption is prohibited, by some person not authorized to consume ~~liquor~~ an alcoholic beverage thereon, shall be evidence that such ~~liquor~~ alcoholic beverage was sold or given to or purchased by the person consuming, or being about to consume, or carrying away the same, as against the occupant of the said premises."

Section 35. Section 4-218, R.C.M. 1947, is renumbered section 4-6-307, and is amended to read as follows:

"~~4-218~~ 4-6-307. Analyst's report as prima facie evidence of contents. In any prosecution under this ~~act~~ code, or the regulations made thereunder, production by a police officer, policeman, constable, inspector or peace officer, of a certificate or report signed or purporting to be signed by a United States or state analyst as to the analysis or ingredients of any ~~liquor~~ alcoholic beverage or other fluid or any preparation, compound, or substance, such certificate or report shall be prima facie evidence of the facts stated in such certificate or report and of the authority of the person giving or making the same without any proof of appointment or signature."

Section 36. Section 4-219, R.C.M. 1947, is renumbered section 4-6-308 and is amended to read as follows:

"~~4-219~~ 4-6-308. Presumption of intoxicating ~~liquor~~ beverage arises, when. The court trying a case shall, in the absence of proof to the contrary, be at liberty to infer that the ~~liquor~~ alcoholic beverage in question is intoxicating from the fact that a witness described it as intoxicating, or by a name which is commonly applied to an [illegible] ~~liquor~~ [illegible]."

Section 37. Section 4-220, R.C.M. 1947, is renumbered section 4-6-309, and is amended to read as follows:

"~~4-220~~ 4-6-309. Inferences from facts of ~~act~~ code claimed to be violation. Upon the hearing of any charge of selling or purchasing ~~liquor~~ an alcoholic beverage, or of unlawfully having or keeping ~~liquor~~ an alcoholic beverage, contrary to any of the provisions of this ~~act~~ code, the court trying the case shall have the right to draw inferences of fact from the kind and quantity of ~~liquor~~ alcoholic beverages found in the possession of the person accused, or in any building, premises, vehicle, motorcar, automobile, vessel, boat, canoe, conveyance, or place occupied or controlled by him, and from the frequency with which ~~liquor~~ the alcoholic beverage is received thereat or therein or is removed therefrom, and from the circumstances under which it is kept or dealt with."

Section 38. Section 4-224, R.C.M. 1947, is renumbered section 4-6-302, and is amended to read as follows:

"~~4-224~~ 4-6-302. Appeals. An appeal shall lie from any conviction or order made in the prosecution of any offense against any of the provisions of this ~~act~~ code and the practice and procedure on any appeal from any such conviction or order, and all proceedings thereon shall be governed by the law applicable to appeal in criminal cases."

Section 39. Section 4-225, R.C.M. 1947, is renumbered section 4-6-201, and is amended to read as follows:

"~~4-225~~ 4-6-201. ~~Inspectors~~ Investigators and prosecuting officers may be employed by ~~board,~~ department of revenue. The ~~board~~ department of revenue may appoint one or more ~~inspectors~~ investigators or prosecuting officers, who, under its direction, shall perform such duties as it may require, and who shall be paid such salaries, fees and expenses as the said ~~board~~ department of revenue may fix."

Section 40. Section 4-226, R.C.M. 1947, is renumbered section 4-1-306, and is amended to read as follows:

"~~4-226~~ 4-1-306. Property and moneys acquired belong to state--expenses of administration, how paid. All property, whether real or personal, all moneys acquired, administered, possessed or received by the ~~board~~ department and all profits earned in the administration of this ~~act~~ code, shall be the property of the state, and all expenses, debts and

liabilities incurred by the ~~board~~ department in connection with the administration of this ~~act~~ code, shall be paid by the ~~board~~ department from the moneys received by the ~~board~~ department under such administration."

Section 41. Section 4-229, R.C.M. 1947, is renumbered section 4-1-406, and is amended to read as follows:

"~~4-229~~ 4-1-406. Disposition of money received. All moneys received from the sale of liquor at the state liquor stores shall be deposited in the revolving fund in the state treasury to the credit of the ~~board~~ department of revenue. The ~~board~~ department is hereby authorized to purchase liquor from moneys deposited to its account in the revolving fund. The ~~board~~ department shall transfer from its account in the revolving fund to its account in the earmarked revenue fund such moneys which are necessary to pay its administrative expense, subject to the limits imposed by legislative appropriation. No obligation created or incurred by the ~~board~~ department shall ever be, or become, a debt or claim against the state of Montana, but shall be payable by the ~~board~~ department solely from funds derived from the operation of state liquor stores. The ~~board~~ department shall pay into the state treasury to the credit of the general fund the receipts from all taxes and licenses by it collected, and also the net proceeds from the operation of [illegible]."

Section 42. Section 4-233, R.C.M. 1947, is renumbered section 4-1-104, and is amended to read as follows:

"~~4-233~~ 4-1-104. [illegible]. The purpose and intent of this ~~act~~ code are to prohibit transactions in liquor which take place wholly within the state of Montana except under state control as specifically provided by this ~~act~~ code, and every section and provision of this ~~act~~ code shall be construed accordingly. The provisions of this ~~act~~ code dealing with the importation, sale and disposition of liquor within the state through the instrumentality of a ~~board~~ department and otherwise provide the means by which such state control shall be made effective, and nothing in this ~~act~~ code shall be construed as forbidding, affecting or regulating any transaction which is not subject to the legislative authority of the state."

Section 43. Section 4-238, R.C.M. 1947, is renumbered section 4-6-401, and is amended to read as follows:

"~~4-238~~ 4-6-401. Premises where liquor illegally sold ~~common~~ public nuisance. Any room, house, building, boat, vehicle, structure or place where ~~intoxicating--liquor--is~~ alcoholic beverages are knowingly manufactured, sold, or bartered, in violation of ~~the State liquor Control Act of Montana~~ this code or section 94-8-107 and all property knowingly kept and used in maintaining the same is hereby declared to be a ~~common "nuisance,"~~ public nuisance and any

person who maintains such a ~~common~~ nuisance shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than one hundred dollars ($100.00), nor more than five hundred dollars ~~($500.00)~~ ($500) and by imprisonment not less than thirty days, nor more than six months."

Section 44. Section 4-240, R.C.M. 1947, is renumbered section 4-1-401, and is amended to read as follows:

"~~4-240~~ 4-1-401. License tax on liquor -- amount -- distribution of proceeds. The department of revenue is hereby authorized and directed to charge, receive and collect at the time of sale and delivery of any liquor under any provisions of the laws of the state of Montana a license tax of five percent (5%) of the retail selling price on all liquor so sold and delivered. Said tax shall be charged and collected on all liquor brought into the state and taxed by the department of revenue. The retail selling price shall be computed by adding to the cost of said liquor the state markup as designated by ~~said--board~~ the department. Said five percent (5%) license tax shall be figured in the same manner as the state excise tax and shall be in addition to said state excise tax. The department of revenue shall retain the amount of such five percent (5%) license tax so received in a separate account. Four-fifths (4/5) of these revenues shall be distributed to the counties according to the amount of liquor sold in each county. One-fifth (1/5)

of these revenues shall be deposited in the general fund. Provided, however, in the case of purchases of liquor by a retail liquor licensee for use in his business, the department shall make such regulations as are necessary to apportion that proportion of license tax so generated to the county where the licensed establishment is located, for use as provided in section ~~4-241~~ 4-1-402, R.C.M. 1947. The department of revenue shall pay quarterly to each county treasurer the proportion of the license tax due each county.

The county treasurer of each county shall retain one-fourth (1/4) of said license tax, and shall, within thirty (30) days after receipt thereof, apportion the remaining three-fourths (3/4) thereof to the treasurers of the incorporated cities and towns within his county, said apportionment to be based in each instance upon the proportion which the gross sale of liquor in such incorporated city or town bears to the gross sale of liquor in all of the incorporated cities and towns in his said county."

Section 45. Section 4-301, R.C.M. 1947, is renumbered section 4-1-102, and is amended to read as follows:

"~~4-301~~ 4-1-102. ~~Citation------of------act--declaration~~ Declaration of policy--as to sale of beer. ~~This act may be cited as the "Montana Beer Act."~~ It is hereby declared to be the policy of the state of Montana that the manufacture,

transportation, distribution, sale and possession of "beer," as that term is hereinafter defined in this ~~act~~ code and which contains not more than ~~four~~ seven per centum (4 7%) of alcohol by weight, shall be controlled and regulated ~~by and under the provisions of "Montana Beer Act" and the "Montana Retail Beer License Act"~~ as provided under this code. Beer, porter, ale, stout and malt liquors containing more than ~~four~~ seven per centum (4 7%) of alcohol by weight and which are defined as "liquor" ~~by the "State Liquor Control Act of Montana,"~~ shall be subject to the regulations and control provided ~~by the "State Liquor Control Act of Montana," (section 4-141 through section 4-171, inclusive, revised Codes of Montana, 1947, as amended) and the regulations and controls provided by the "Montana Retail Beer License Act" (sections 4-401 through 4-441, inclusive, Revised Codes of Montana, 1947, as amended)~~ for liquor.

Section 46. Section 4-303, R.C.M. 1947, is renumbered section 4-3-304, and is amended to read as follows:

"~~4-303~~ 4-3-304. Closing hours for licensed retail ~~beer~~ establishments. Hereafter all licensed establishments ~~which sell beer as defined in subsection (1) of section 4-303,~~ ~~is~~ alcoholic beverages are sold, offered for sale or given away at retail shall be closed during the following hours:

~~(a) Sunday from two A.M. to one P.M.;~~

~~(b)~~ (a) On any ~~other~~ day between two A.M. and eight A.M.; provided, however, that when any municipal incorporation has by ordinance further restricted the hours of sale of ~~beer~~ alcoholic beverages, then the sale of ~~beer~~ alcoholic beverages is prohibited within the limits of any such city or town during the time such sale is prohibited by this ~~act~~ code and in addition thereto during the hours that it is prohibited by such ordinance. During such hours all persons except the owner and employees of such licensed establishments shall be excluded therefrom except as provided in section 4-3-305."

Section 47. Section 4-304, R.C.M. 1947, is renumbered section 4-3-305, and is amended to read as follows:

"~~4-304~~ 4-3-305. Sale of ~~beer~~ alcoholic beverages during closed hours forbidden--lawful business need not be closed. During the hours when the said licensed establishments where ~~beer is~~ alcoholic beverages are sold at retail are required by this ~~act~~ code to be closed, it shall be unlawful to sell, offer for sale or give away any ~~beer~~ such alcoholic beverages, and during such hours all persons save employees of such licensed establishments shall be excluded therefrom; provided, however, that when a licensed establishment is operated in conjunction with a hotel, restaurant, bus depot, railway terminal, or other lawful business other than that of the sale of intoxicating liquor

or beer, then such other lawful business need not be closed, but only the part thereof where such beer or liquor is sold."

Section 48. Section 4-308, R.C.M. 1947, is renumbered section 4-3-202, and is amended to read as follows:

"~~4-308 (1-3-202. Beer, when declared nonintoxicating--sales, when permitted--beer containing one-half of one per cent (1/2 of 1%), or more, of alcohol by weight, and not more than three and two-tenths per cent (3.2%) of alcohol by weight, to be deemed intoxicating, and such beer and other beer containing more than three and two-tenths per cent (3.2%), but not more than four per cent (4%) of alcohol by weight may be manufactured and/or sold or transported in and through and or possessed therein in the manner and upon the conditions prescribed in this act and not otherwise. The sale of beer by the Montana liquor control board~~ department is hereby prohibited~~, save and except sale, porter and stout containing more than four per cent (4%) of alcohol by weight.~~"

Section 49. Section 4-309, R.C.M. 1947, is renumbered section 4-3-201, and is amended to read as follows:

"~~4-309~~ 4-3-201. Possession, manufacture or disposal of beer in other manner than prescribed unlawful. It shall be unlawful to manufacture or sell, or dispose of, or possess for the purpose of sale, beer of any kind or character of an

alcoholic content greater than herein prescribed, or other than in the manner permitted by this ~~act~~ code."

Section 50. Section 4-310, R.C.M. 1947, is renumbered section 4-4-101, and is amended to read as follows:

"~~4-310~~ 4-4-101. Applications for sale or manufacture of beer--qualifications of applicant. Any person, desiring to manufacture, import or ~~and~~ sell beer under the provisions of this ~~act~~ code, shall first apply to the ~~board~~ department for a permit so to do and pay with such application the license fee herein prescribed; the ~~board~~ department shall require of such applicant satisfactory evidence that the applicant is of good moral character and a law-abiding person. Upon being satisfied from such application, or otherwise, that such applicant is qualified as herein provided, the ~~board~~ department shall issue such license to such person, which license shall be at all times prominently displayed in the place of business of such applicant. If the ~~board~~ department shall find that such applicant is not qualified, no license shall be granted and such license fee shall be returned."

Section 51. Section 4-311, R.C.M. 1947, is renumbered section 4-3-203, and is amended to read as follows:

"~~4-311~~ 4-3-203. Brewers' monthly report -- power of ~~board~~ department to inspect books and premises. Every brewer, licensed to do business in this state, shall, on or

before the fifteenth day of each month, make an exact return to the ~~board~~ department of the amount of beer manufactured by him and the amount sold by him in the previous month, and of his inventory, in the manner and form as shall be prescribed by the ~~board~~ department, and the ~~board~~ department shall have the right at any time to make an examination of any brewer's books and of his premises, and otherwise check the accuracy of any such return, or to check the alcoholic content of beer manufactured by him."

Section 52. Section 4-313, R.C.M. 1947, is renumbered section 4-3-204, and is amended to read as follows:

"~~4-313~~ 4-3-204. Sale of beer by brewers--to whom. It shall be lawful for any brewer to sell or dispose of beer manufactured by him to any licensed wholesaler~~,--retailer, club--or--person--carrying--liquor--and--having--a--license--under this--act.~~"

Section 53. Section 4-317, R.C.M. 1947, is renumbered section 4-3-206, and is amended to read as follows:

"~~4-317~~ 4-3-206. Licenses of brewers--persons to whom brewers may sell beer~~--barrelage--tax. (1)~~ Any brewer duly licensed as such by the United States of America, who manufactures beer in the state of Montana, upon payment of the annual license fee imposed by section ~~4-341~~ 4-4-401 and upon presenting satisfactory evidence to the ~~board~~ department as required by section ~~4-319~~ 4-4-101, shall be

licensed by the ~~board~~ department in accordance with the provisions of this ~~act~~ code and such regulations as may be prescribed by the ~~board~~ department, to sell and deliver:

(a) Beer to a vendor;

(b) Beer to any licensees who are entitled to purchase beer from a brewer under this act; or

(c) Beer to the public, subject to the limitations and restrictions contained in this act; or to do any one or more of such acts of sale and delivery of beer.

~~(2)--In--addition--to--the--annual--license--tax--imposed--by section--4-341,--a--tax--of--three--dollars--($3)--per--barrel--of thirty-one--(31)--gallons--or--proportionate--amount--shall--be--and--every--barrel--of--beer--sold--by--any--duly--licensed--brewer who--manufactures--beer--in--the--state--of--Montana,--where--said barrelage--tax--shall--be--due--at--the--end--of--each--month--and shall--be--payable--when--the--brewer's--monthly--return--or statement--required--to--be--made--to--the--board--under--the provisions--of--section--4-319.~~"

Section 54. Section 4-317.1, R.C.M. 1947, is renumbered section 4-4-102, and is amended to read as follows:

"~~4-317.1~~ 4-4-102. Right of brewers to maintain and operate storage depots--annual licenses. It shall be lawful for any brewer duly licensed to manufacture beer in the state of Montana, upon payment of the board department

of an annual license fee, in addition to all other fees and taxes required to be paid by such brewer, of four hundred dollars ($400.00) for each storage depot, to own, lease, maintain and operate, in any city or town in the state of Montana, a building for use as a storage depot, equipped with refrigeration and cooling apparatus, for receiving, handling, and storing beer therein and distributing and selling beer therefrom, as brewers are permitted to sell and distribute beer under the provisions of this ~~act~~ code."

Section 55. Section 4-317.7, R.C.M. 1947, is renumbered section 4-3-212, and is amended to read as follows:

"~~4-317~~ 4-3-212. Agreements filed with department of revenue. An exact copy of all agreements, contracts or franchises between a brewer and a wholesaler shall be filed with the department of revenue as a public document and shall be available to any of the parties to a dispute. The department, upon the instigation of any action in a court of record, shall file an exact certified copy of the agreement with the court for the court's consideration in determining any matter before it. Any contracts, agreements or franchises not upon record with the ~~board~~ department shall not be considered by any court as having any force or effect."

Section 56. Section 4-1[illegible], R.C.M. 1947, is renumbered

section 4-4-103, and is amended to read as follows:

"~~4-318~~ 4-4-103. Wholesalers' licenses--application for and issuance--subwarehouse--imported beer handled through warehouse or subwarehouse. Any person desiring to sell and distribute beer as a wholesaler under the provisions of this ~~act~~ code shall apply to the ~~board~~ department for a license to do so and tender with his application the license fee hereinafter provided for and the ~~board~~ department is hereby empowered, authorized and directed to issue ~~one---(1) wholesale license for every thirty (30) retail beer licenses issued--on the number of retail beer licenses issued in the state~~ wholesale licenses to qualified applicants in accordance with the provisions of this ~~act~~ code; such license shall be at all times prominently displayed in the place of business of such wholesaler.

To qualify for a wholesaler's license the applicant shall ~~have been~~ be a resident of Montana ~~for--a--period--of five--(5)--years immediately prior to making application, or if said applicant is a Montana corporation said--corporation shall--have--been--organized--for--a--period--of--five--(5)--years immediately prior to--this--application~~; provided, however, any individual or partnership which has been licensed as a beer wholesaler may, upon incorporation in accordance with the laws of the state of Montana, transfer such license to the corporation if a majority of the capital stock thereof

is held by said individual or the members of said partnership; or if applicant is a foreign corporation said corporation shall ~~have been~~ be authorized to do business in [illegible] ~~for a period of five (5) years immediately prior to making application~~; and said applicant shall have a fixed place of business, sufficient capital, the facilities, storehouse, receiving house or warehouse for the receiving of, storage, handling and moving of beer in large and jobbing quantities for distribution and sale in original packages to other licensed wholesalers or licensed retailers. Each wholesaler shall be entitled to only one (1) wholesale license, which license shall be issued for his principal place of business in Montana; a duplicate license may be issued for one (1) subwarehouse only in Montana for each wholesale licensee, which said duplicate license shall at all times be prominently displayed at said subwarehouse~~; licenses already issued which are in excess of said limitations and which are of issue prior to the date of the passage and approval of this act, shall be renewable, but no new wholesale beer licenses shall be issued until the number of licenses shall be reduced to within the above limitation.~~

All beer manufactured outside of the state of Montana and shipped into Montana shall be consigned to and shipped to a licensed wholesaler, and by him unloaded into his warehouse in Montana or subwarehouse in Montana; said

wholesaler shall distribute said beer from such warehouse or subwarehouse; said wholesaler shall keep records at his principal place of business of all beer including the name or kind received, on hand, sold and distributed; said records may at all times be inspected by any member or representative of the ~~board~~ department; any beer which has been shipped into Montana and has not been shipped to and distributed from a warehouse of a licensed wholesaler shall be seized by any peace officer or representative of the ~~board~~ department and may be confiscated in the manner as provided for the confiscation of intoxicating liquor."

Section 57. Section 4-319, R.C.M. 1947, is renumbered section 4-3-213, and is amended to read as follows:

"~~4-319~~ 4-3-213. Monthly report of wholesaler. Every wholesaler, licensed to do business in this state, as herein provided, shall on or before the fifteenth day of each month, make an exact return to the ~~board~~ department of the amount of beer manufactured in this state, sold and delivered by him, and also of the amount of beer manufactured in places outside of the state, sold and delivered by him, during the previous month, and of his inventory in the manner and form as shall be prescribed by the ~~board~~ department, and the ~~board~~ department shall have the right at any time to make an examination of the said wholesaler's books and of his premises, and otherwise check

the accuracy of such return or to check the alcoholic content of beer which he may have on hand."

Section 58. Section 4-320, R.C.M. 1947, is renumbered section 4-6-403, and is amended to read as follows:

"~~4-320~~ 4-1-402. Penalty for brewer's and wholesalers' failure to ~~make--statement--payment--of~~ pay tax. ~~With--such return,--the--state--wholesaler--shall--pay--to--the--board--the amount--of--tax--upon--all--beer--not--accounted--for--state--stock, on--the--basis--aforementioned--previously,--which--shall--have--been sold--by--him--during--such--previous--month.~~ Any ~~such~~ tax owed by a brewer or wholesaler under this code not paid within the time herein provided for shall be delinquent and a penalty of five per cent (5%) thereof shall be added thereto and the total thereof shall bear interest at the rate of one per cent (1%) per month from the date of delinquency until paid, and any brewer or wholesaler who fails, neglects or refuses to make the return to the ~~board~~ department provided for in ~~section~~ sections ~~4-319~~ 4-3-203 or 4-3-213, or refuses to allow such examination provided for in ~~section~~ sections ~~4-319~~ 4-3-203 or 4-3-213, or fails to make an accurate return according to the manner prescribed, shall be deemed guilty of having committed a misdemeanor and upon conviction thereof shall be fined in an amount not exceeding one thousand dollars ($1,000.00)."

Section 59. Section 4-321, R.C.M. 1947, is renumbered

section 4-3-214, and is amended to read as follows:

"~~4-321~~ 4-3-214. To whom wholesaler may sell. It shall be lawful for any wholesaler to sell and deliver beer purchased or acquired by him to a wholesaler, retailer, ~~club~~ or to a common carrier, holding and having a license under this act."

Section 60. Section 4-325, R.C.M. 1947, is renumbered section 4-3-217, and is amended to read as follows:

"~~4-325~~ 4-3-217. Penalty for brewer's failure to make returns--lien of taxes--enforcement--release. If any brewer subject to the payment of the tax provided for in ~~subdivision--(3)--[(2)]--of~~ section ~~4-317~~ 4-1-405 or any wholesaler subject to the payment of the tax provided for in section ~~4-324~~ 4-1-404, shall fail, neglect or refuse to make any return required by ~~Montana-Beer-Act~~ this code, or shall fail to make payment of such tax within the time herein provided, the ~~board~~ department shall, forthwith after such time has expired, proceed to inform itself as best it may regarding the matters and things required to be set forth in such return and from such information as it may be able to obtain, to make a statement showing such matters and things and determine and fix the amount of such tax due the state from such delinquent brewer or wholesaler and shall add thereto a penalty of five per cent (5%) thereof for the first failure, willful neglect or refusal; ten per cent

(10%) for the second; fifteen per cent (15%) for the third; and twenty-five per cent (25%) for the fourth, and each subsequent failure, neglect or refusal, which shall be in addition to the five per cent (5%) penalty hereinbefore provided for nonpayment of such tax within the time hereinbefore provided. Said tax and the penalties added thereto shall bear interest at the rate of one per cent (1%) per month from the date such returns should have been made and said tax paid. The ~~board~~ department shall then proceed to collect such tax with penalties and interest. Upon request of the ~~board~~ department it shall be the duty of the attorney general to commence and prosecute to final determination in any court of competent jurisdiction an action to collect such tax. All taxes due from any brewer or wholesaler under the provisions of ~~Montana Beer Act~~ this chapter, together with all penalties and interest thereon, shall be a lien upon any and all property of such brewer or wholesaler upon the filing by the ~~board~~ department of a duplicate copy of the statement so made by the ~~board~~ department, or a certified copy of any return filed with ~~said board~~ the department, in the office of the county clerk of the county where such property is situated, which lien shall have precedence over any other claim, lien or demand thereafter filed or recorded and may be enforced in the name of the state of Montana in the same manner as other liens

are enforced by law. No action shall be maintained to enjoin the collection of such tax or any part thereof. When the amount due the state is paid in full and before the entry of foreclosure decree, the board department shall release the said lien by filing in the office of the county clerk wherein is filed the said lien a written release thereof. At any time prior to the payment of said taxes, penalty and interest, before the entry of foreclosure decree, the ~~board~~ department may release from the operation of said lien a part of said property to enable the brewer or wholesaler to mortgage, sell or otherwise dispose of the same in order to procure funds with which to pay said taxes, penalty and interest, provided there remains, in the judgment of the ~~board~~ department, sufficient property subject to said lien to ensure the payment of the whole of said unpaid taxes, penalty and interest."

Section 61. Section 4-326, R.C.M. 1947, is renumbered section 4-3-218, and is amended to read as follows:

"~~4-326~~ 4-3-218. Carriers' reports of beer transported. Every railroad and every motor carrier transporting beer manufactured out of this state from points without this state and delivering the same to points within this state shall, on or before the fifteenth day of each month, make an exact return to the ~~board~~ department of the amount of such beer so transported and delivered by such railroad or motor

carrier during the previous month, and shall state in such return the name and address of the consignor, the name and address of the consignee, the date of delivery, and the amount delivered."

Section 62. Section 4-327, R.C.M. 1947, is renumbered section 4-4-104, and is amended to read as follows:

"~~4-327~~ 4-4-104. Retailers' license--application and issuance--display required--check of alcoholic content by ~~board~~ department. Any person desiring to possess and have for sale beer, under the provisions of this ~~act~~ code, for the purpose of selling it at retail, shall first apply to the ~~board~~ department for a permit so to do and tender with such application the license fee herein provided for. Upon being satisfied from such application or otherwise that the applicant is qualified as herein provided, the ~~board~~ department shall issue a license to such person, which license shall at all times be prominently displayed in the place of business of the applicant. If the ~~board~~ department shall find that the applicant is not qualified, no license shall be granted and the license fee tendered shall be by the ~~board~~ department returned. The ~~board~~ department shall have the right and is hereby given authority to make, at any time, an examination of the books of account of any such retailer and of his premises and otherwise check his methods of conducting business and the alcoholic contents of the

beer kept by him for sale. A person may not sell beer at retail without a valid license issued under this code."

Section 63. Section 4-328, R.C.M. 1947, is renumbered section 4-3-302, and is amended to read as follows:

"~~4-328~~ 4-3-302. Sale of beer by retailer--consumption on premises. It shall be lawful for such retailer to sell and serve beer either on draught or in ~~bottles~~ containers to the public to be consumed on the premises of such retailer."

Section 64. Section 4-330, R.C.M. 1947, is renumbered section 4-3-301, and is amended to read as follows:

"~~4-330~~ 4-3-301. Purchase of beer by retailer--persons to whom beer may not be sold, delivered or given by brewers, wholesalers or retailers. It shall be unlawful for ~~such~~ a licensed retailer to purchase or acquire beer from anyone except a brewer or wholesaler or retailer licensed under the provisions of this ~~act~~ code.

It shall be unlawful for any brewer, wholesaler or retailer, his or her employee or employees to sell, deliver or give away, or cause or permit to be sold, delivered or given away, any beer to:

1. Any person under the age of eighteen (18) years;

2. Any intoxicated person or any person actually, apparently or obviously intoxicated~~;~~.

~~3.--An-habitual-drunkard;-or~~

~~4.--An-interdicted-person;~~

~~any person, manager or retailer violates any of the provisions of this section, shall upon conviction thereof be subject to the penalties provided for in section 4-346 of the Montana beer Act, and the commission may revoke the license of any such brewer, wholesaler or retailer shall, in the discretion of the court, be immediately revoked, or said license may be suspended for a period of not more than three (3) months. Any person or group of persons who knowingly misrepresents his or her qualification for the purpose of obtaining beer from any licensee shall be equally guilty with said licensee and shall, upon conviction thereof, be subject to the penalty provided in section 4-385 of the Montana beer Act.~~"

Section 65. Section 4-332, R.C.M. 1947, is renumbered section 4-4-105, and is amended to read as follows:

"~~4-332~~ 4-4-105. Special permits to sell beer--application and issuance--fee. (1) Any association or corporation conducting a picnic, convention, fair, civic or community enterprise, or sporting event, shall in the discretion of the liquor division be entitled to a special permit to sell beer to the patrons of such event to be consumed within the enclosure wherein the event is held.

The application of any such association or corporation shall be presented ten (10) days in advance and shall describe the location of such enclosure wherein such event

is held, the nature of such event, the period when it is contemplated that the same will be held. Such application shall be accompanied by the amount of the permit fee [illegible].

The permit issued to such association or corporation shall be a special permit, but shall not authorize the sale of beer except starting one (1) day in advance of the regular period when events are being held upon such grounds and during the period described in such application, and for one (1) day thereafter.

The permit fee shall be at the rate of fifteen dollars ($15) per day for each day beer is sold, or to be sold at those events lasting two (2) or more days, but in no event less than the sum of thirty dollars ($30), hereby fixed as the minimum fee for such permit.

(2) Any post of a nationally chartered veterans' organization or any lodge of a recognized national fraternal organization, not otherwise licensed under this act [illegible], shall in the discretion of the ~~board~~ department, without notice or hearing as provided in section ~~4-407.1~~ 4-4-302, be entitled to a special permit to sell beer at such post or lodge, to members and their guests only, to be consumed within the hall or building of such post or lodge.

The application of such nationally chartered veterans' organization or lodge of a recognized national fraternal

organization shall describe the location of the hall or building where the special permit shall be used and the date it will be used. Such application shall be accompanied by a permit fee of ~~five~~ ten dollars ~~($5.00)~~ ($10).

The special permit issued shall be for a twenty-four (24) hour period ending at 2 a.m. only and the ~~board~~ department shall not issue more than twelve (12) such permits to any such post or lodge during a calendar year."

Section 66. Section 4-333, R.C.M. 1947, is renumbered section 4-4-201, and is amended to read as follows:

"~~4-333~~ 4-4-201. Issuance of retail beer licenses -- limit on number of ~~---off-premises~~ beer licenses -- ~~lapse and--cancellation----~~ wine license amendments -- retail license fee. (1) Except as otherwise provided by law, a license to sell beer at retail, or beer and wine at retail pursuant to subsection (2), in accordance with the provisions of this act and the regulations of the department of revenue, may be issued to any person, firm or corporation who shall be approved ~~by--a-majority-of-the-board~~ by the department as a fit and proper person, firm or corporation to sell beer; provided, that ~~the--number-of-retail-beer licenses-that-the-board-may-issue--shall--be--determined--as follows:~~

(a) ~~The~~ the number of retail beer licenses that the board department may issue for premises situated within

incorporated cities and incorporated towns and within a distance of five (5) miles from the corporate limits of such cities and towns shall be determined on the basis of population as shown by the most recent official United States census authorized by congress, to wit:

In incorporated towns of five hundred (500) inhabitants or less and within a distance of five (5) miles from the corporate limits of such towns, ~~not-more-than-two-(2)-retail beer--licenses--to-be-used-in-conjunction-with-retail-liquor licenses-and~~ not more than one (1) ~~additional~~ retail beer license which shall not be used in conjunction with a retail liquor license; in incorporated cities or incorporated towns of more than five hundred (500) inhabitants and not over two thousand (2000) inhabitants and within a distance of five (5) miles from the corporate limits of such cities or towns, ~~two-(2)-retail-beer-licenses--for--the--first--five--hundred (500)--inhabitants--or--one-(1)-retail-beer-license-for-each additional-five-hundred--(500)-inhabitants,-which-sets-retail beer-licenses-shall--be--used--in--conjunction--with--retail liquor--licenses,--and~~ one (1) ~~additional~~ beer license for each five hundred (500) inhabitants which said beer license shall not be used in conjunction with retail liquor licenses; in incorporated cities of over two thousand (2000) inhabitants and within a distance of five (5) miles from the corporate limits of such cities, ~~five--(5)--retail--beer~~

~~[illegible] used in conjunction with retail liquor licenses, and~~ two (2) additional retail beer licenses for the first two thousand (2000) inhabitants or major fraction thereof and one (1) additional retail beer license for each additional two thousand (2000) inhabitants which shall not be used in conjunction with retail liquor licenses. The number of the inhabitants in such cities and towns, exclusive of the number of inhabitants residing within a distance of five (5) miles from the corporate limits thereof, shall govern the number of retail beer licenses that may be issued for use within such cities and towns and within a distance of five (5) miles from the corporate limits thereof; provided, that where two (2) or more incorporated municipalities are situated within a distance of five (5) miles from each other, the total number of retail beer licenses that may be issued for use in both of such municipalities and within a distance of five (5) miles from their respective corporate limits, shall be determined on the basis of the combined populations of both of such municipalities and shall not exceed the foregoing limitations. The said distance of five (5) miles from the corporate limits of any incorporated city or incorporated town shall be measured in a straight line

[illegible] licensing to the nearest corporate boundary of such city or town. Retail beer licenses of issue on the date of the passage and approval of this act and which are in excess of the foregoing limitations shall be renewable, but no new licenses shall be issued in violation of such limitations; provided, that such limitations shall not prevent the issuance of a nontransferable and nonassignable retail beer license to any post of a nationally chartered veterans' organization or any lodge of a recognized national fraternal organization, if such veterans' or fraternal organization has been in existence for a period of five (5) years or more prior to January 1, 1949. No incorporated city or incorporated town may by ordinance restrict the number of licenses that the ~~board~~ department may issue; provided that no retail beer license may be issued by the ~~board~~ department for any premises situated within any zone of such city or town wherein the sale of beer is prohibited by ordinance, a certified copy of which has been filed with the ~~board~~ department. The ~~board~~ department shall have discretion to deny the issuance of a retail beer license if it shall determine that the premises proposed for licensing are off regular police beats and cannot be properly policed by local authorities.

(b) The number of retail beer licenses that the ~~board~~

department may issue for use at premises situated outside of [illegible] and outside of the area within a distance of five (5) miles from the corporated limits thereof, or for use at premises situated within any unincorporated town shall be as determined by the ~~board~~ department in the exercise of its sound discretion; provided, that no retail beer license shall be issued for any premises so situated unless the ~~board~~ department shall determine that the issuance of such license is required by public convenience and necessity.

~~(3) A retail license to sell beer in the original package for off-premise consumption only may be issued to any person, firm or corporation who shall be approved by a majority of the board or six and three or person, firm or corporation to sell beer and whose premises proposed for licensing are operated as a bona fide grocery store or a drugstore licensed as a pharmacy. The number of such licenses that the county may issue shall be limited by the provisions of subsection (1) of this section, but shall be determined by the board in the exercise of its sound discretion, and no beer may be sold in the exercise of its sound discretion grant or deny any application for any such license or suspend or revoke any such license or cause the annual license fee for a license to sell beer at retail for not exceeding [illegible] shall be [illegible] a retail beer license.~~

~~(3) From and after February 1, 1947, any retail license issued pursuant to this section (including any retail license to sell beer for off-premises consumption, but actually used in a manner substantially for a period of [illegible] days, shall automatically lapse, [illegible] presentation for renewal or upon a person of the board shall cancel such license or revoke and no portion of the fee paid for shall be refunded. The provisions of this subsection shall apply to the license of any licensee whose premises are operated as a seasonal business in connection with a bona fide guide ranch, resort, park, motel, camping facility or like business, provided such licensee has secured written authority from the board to change its license provided that a specified period of time [illegible] should the liquor control board determine that such was reasonably based on general at the licensee, then the same provision for off-premise sales shall not apply.~~

~~(4)~~ (2) A person holding a license to sell beer for consumption on the premises at retail may apply to the department for an amendment to the license permitting the holder to sell wine as well as beer. The ~~department~~ division may issue such amendment if it finds, on a satisfactory showing by the applicant, that the sale of wine

for consumption on the premises would be supplementary to a restaurant or prepared food business. A person holding a beer-and-wine license may sell wine ~~subject--to--the limitations--imposed--by--this--title--on--selling--beer~~ for consumption on the premises. He may buy wine only at retail from the department. Nonretention of the beer license, for whatever reason, shall mean automatic loss of the wine amendment license.

~~(5)~~ (3) The annual license fee for a license to sell wine on the premises, when issued as an amendment to a beer only license shall be two hundred dollars ($200).

(4) A retail license to sell beer in the original packages for off-premise consumption only may be issued to any person, firm or corporation who shall be approved by the department as a fit and proper person, firm or corporation to sell beer and whose premises proposed for licensing are operated as a bona fide grocery store or a drugstore licensed as a pharmacy. The number of such licenses that the department may issue shall not be limited by the provisions of subsection (1) of this section, but shall be determined by the department in the exercise of its sound discretion, and the department may in the exercise of its sound discretion grant or deny any application for any such license or suspend or revoke any such license for cause. The annual license fee for a license to sell beer at retail

for off-premises consumption shall be the same as for a retail beer license."

Section 67. Section 4-338, R.C.M. 1947, is renumbered section 4-3-104, and is amended to read as follows:

"~~4-338~~ 4-3-104. Purchase of beer must be from licensed brewer, wholesaler or retailer. It shall be unlawful for the operator of any ~~such railroad train, as a~~ common carrier, or its employees, to make sale of or dispose of any beer or malt liquors except such as shall have been lawfully acquired or purchased from a brewer, or wholesaler ~~or retailer~~ duly licensed."

Section 68. Section 4-341, R.C.M. 1947, is renumbered section 4-4-401, and is amended to read as follows:

"~~4-341~~ 4-4-401. Fees for licenses--expiration dates--regulation by cities and towns. Each licensee, under the provisions of this ~~act~~ code, shall pay an annual license fee as follows:

Each "brewer," wherever located, whose product is sold or offered for sale within the state, five hundred dollars ~~($500.00)~~ ($500);

Each "wholesaler" four hundred dollars ~~($400.00)~~ ($400);

Each "retailer" two hundred dollars ~~($200.00)~~ ($200);

Any unit of a nationally chartered veterans' organization fifty dollars ~~($50.00)~~ ($50);

Each "vehicle" being a common carrier of passengers, or other persons operating buffet and dining cars for such common carrier, twenty-five dollars ~~($25.00)~~ ($25).

All licenses issued in any year shall expire on the 30th day of June at midnight of such year. A transfer of any such license may be made on application to the Montana ~~liquor-control-board~~ department of revenue with the consent of the said ~~board~~ department provided that said transferee shall qualify under this ~~act~~ code. The cities and incorporated towns may enact ordinances defining certain areas in said cities or towns where beer may or may not be sold providing that said ordinance does not affect the limit of retail beer licenses which shall be issued by the Montana ~~liquor--control--board~~ department of revenue based upon the population of the city or town and said city or town shall file a certified copy of said ordinance with the Montana ~~liquor-control-board~~ department of revenue; the cities and towns may also impose a fee on a licensee of the ~~board~~ department for selling beer at retail in the city or town providing said fee shall be reasonable and not in excess of the ~~amount-imposed--by--the--state~~ limits set by section 4-4-406. This ~~act~~ code shall not be construed or interpreted so as to repeal, amend, modify, change, or alter any provisions of ~~the--Montana--Beer--Act~~ this code which require beer manufactured outside of the state of Montana

and shipped into Montana to be consigned to and shipped to a licensed wholesaler and by him unloaded into his warehouse or subwarehouse in Montana."

Section 69. Section 4-342, R.C.M. 1947, is renumbered as section 4-4-402, and is amended to read as follows:

"~~4-342~~ 4-4-402. Denial of application for license or renewal -- suspension or revocation -- actions. The ~~board~~ department may (1) upon its own motion and shall (2) upon a written, verified complaint of any person, investigate the action and operation of any brewer, wholesaler or retailer licensed under ~~the-Montana-Beer-Act~~ this code. If the ~~board~~ department, after investigation, shall have reasonable cause to believe that any such licensee has violated any of the provisions of this ~~act~~ code, or any rules, or regulations of the ~~board~~ department, it may, in its discretion, and in addition to the other penalties herein prescribed, ~~i~~ against a licensee, proceed to revoke the license of any such licensee, or it may suspend the same for a period of not to exceed three (3) months, or it may refuse to grant a renewal of said license upon the expiration thereof, ~~--under--the procedures--herein-provided:---If--the--board-shall,-in-its sound-discretion,-determine-to-invoke--such--procedures--for the--purpose--of--refusing-to-grant-a-license-or-refusing-to grant-a-renewal-thereof-to-any-applicant,-or-for-revoking-or suspending-any-license-previously--granted,--it--shall--give-~~

resident or licensee, as the case may be, fifteen (15) days' notice in writing of its intended action, addressed and forwarded by registered mail to the applicant or licensee at the address given in the application that license, or upon the applicant's license, as the case may be, stating generally the reasons for its intended action, which said fifteen (15) day period shall constitute or licensee may, in cases of intention to refuse to grant a renewal thereof, institute proceedings in the nature of a writ of review, or, in case of intention to revoke or suspend a license, institute proceedings in tranquillity, and in any event in the district court of the county wherein the premises of applicant or licensee are located for the purpose of having the intended action of the board judicially reviewed and inquired into for (a) abuse of discretion on the part of the board, (b) failure of the board to observe, or its departure from, or disregard of the applicable law governing the board in the particular circumstances, or (c) capricious or tyrannical action by the board. The board shall file all cases certify to the court its complete record in the matter and the issues shall be heard on the matter by the court upon such record and upon such further legal evidence as the parties may present. If the court in any such proceeding determines that such

license has, in fact, violated any provisions of this act or any regulations of the board, the court shall dismiss such proceedings, or, if the board shall proceed to such administrative matters as to it seems proper in the circumstances. Pending determination of such matter on the merits the court may, upon a showing of cause presented by a license and upon such terms as the court may prescribe in the exercise of the surrounding circumstances, stay the effective date of the treasured action or of the order for such time as the court may seem proper. If an stay order is issued by the court or any stay order once issued has expired, the court shall issue the order or revocation or issue the order applied for, or revoke it. If the court really on the other hand, determine that good cause did not exist for the intended action of the board, or that the board abused its discretion, or otherwise acted unlawfully with respect to the intended action, or any of the grounds certain stated, the court shall issue the order and decree accordingly and the order shall be the exclusive. Either party to the proceeding in a the district court may appeal from a decision to the supreme court of the state of Montana, by filing the proceedings applicable to such appeals in civil actions. or impose a civil penalty not to exceed one

thousand five hundred dollars ($1500), subject to the opportunity for a hearing under the Montana Administrative Procedure Act."

Section 70. Section 4-344, R.C.M. 1947, is renumbered section 4-6-301, and is amended to read as follows:

"~~4-344~~ 4-6-301. Jurisdiction of courts. As to misdemeanor actions, ~~The~~ the district courts of this state shall have concurrent jurisdiction with justice of the peace courts in all prosecutions under this ~~act~~ code."

Section 71. Section 4-346, R.C.M. 1947, is renumbered section 4-6-402, and is amended to read as follows:

"~~4-346~~ 4-6-402. Action to enjoin nuisance -- injunction -- order of court -- bond. An action to enjoin any nuisance defined in this ~~act~~ code may be brought in the name of the state of Montana by the attorney general of the state or by any county attorney. Such action shall be brought and tried as an action in equity and may be brought in any court having jurisdiction to hear and determine equity cases. If it is made to appear by affidavits or otherwise, to the satisfaction of the court, or judge in vacation, that such nuisance exists, a temporary writ of injunction shall forthwith issue restraining the defendant from conducting or permitting the continuance of such nuisance until the conclusion of the trial. If a temporary injunction is prayed for, the court may issue an order

restraining the defendant and all other persons from removing or in any way interfering with the fixtures or other things used in connection with the violation of this act constituting such nuisance. No bond shall be required in instituting such proceedings. It shall not be necessary for the court to find the property involved was being unlawfully used as aforesaid at the time of the hearing, but on finding that the material allegations of the petition are true, the court shall order that no liquor or beer shall be manufactured, sold, or bartered in such room, house, building, boat, vehicle, structure, or place, or any part thereof. And upon judgment of the court ordering such nuisance to be abated, the court may order that the room, house, building, structure, boat, vehicle, or place shall not be occupied or used for one (1) year thereafter; but the court may, in its discretion, permit it to be occupied or used if the owner, lessee, tenant, or occupant thereof shall give bond with sufficient surety, to be approved by the court making the order, in the penal and liquidated sum of not less than five hundred dollars ~~($500.00)~~ ($500), nor more than one thousand dollars ~~($1,000.00)~~ ($1,000), payable to the state of Montana, and conditioned that liquor or beer will not thereafter be manufactured, sold or bartered therein or thereon, and that he will pay all fines, costs, and damages that may be assessed for any violations of this

~~act~~ code upon said property."

Section 72. Section 4-347, R.C.M. 1947, is renumbered section 4-1-407, and is amended to read as follows:

"~~4-347~~ 4-1-407. Revenue to be paid to state treasurer--disposition of revenue. Except as provided in section ~~4-347.1~~ 4-1-408 of this ~~act~~ code, all fees, charges, taxes and revenues collected by or under authority of the [illegible] ~~Beer--Act~~ shall be paid over to the state treasurer on or before the tenth (10th) day of each and every month who shall deposit said funds to the credit of the state general fund."

Section 73. Section 4-347.1, R.C.M. 1947, is renumbered section 4-1-408, and is amended to read as follows:

"~~4-347.1~~ 4-1-408. Revenue allocation. All revenue received from taxes on beer under sections ~~4-317~~ 4-1-404 and ~~4-324~~ 4-1-405, R.C.M. 1947, over and above one dollar and fifty cents ($1.50) per barrel of thirty-one (31) gallons shall be deposited with the state treasurer to the credit of the incorporated cities and towns beer tax account in the earmarked revenue fund. The state treasurer shall, monthly, distribute this amount of money to the incorporated cities and towns in the direct proportion that the population of each city and town bears to the total population of all

incorporated cities and towns as shown in the latest official federal census. For cities and towns incorporated after the latest official federal census, the census shall be determined as of the date of incorporation as evidenced by the certificate of the incorporating officials of that city or town. If a city or town disincorporates, it shall cease to receive any funds under this section and the amount previously distributed to the city or town shall be distributed to the [illegible] incorporated [illegible]. All funds received by cities and towns under this section shall be expended for state purposes such as law enforcement, [illegible] of the transportation [illegible], [illegible] public health."

Section 74. Section 4-349, R.C.M. 1947, is renumbered section 4-3-219, and is amended to read as follows:

"~~4-349~~ 4-3-219. Brewers and wholesalers not to supply fixtures, etc., to retailers, except as specified--~~brewers not to be interested in retailer financially~~. (a) It shall be unlawful for any brewer or wholesaler to lease, furnish, give or pay for any premises, furniture, fixtures, equipment, signs, or any other advertising matter or any other property to any retail licensee, used or to be used in the dispensation of beer in and about the interior or exterior of the place of business of any licensed retailer or furnish, give or pay for any repairs, improvements,

painting or decorating on or within such premises; provided, however, that it shall be lawful for a brewer or wholesaler to furnish, give or loan to a retail licensee:

1. Bottle openers, can openers and trays, with or without advertising matter thereon;

2. Advertising matter or novelties, of a value of not to exceed fifteen dollars ~~($15.00)~~ ($15) in any calendar year, to any one (1) retailer for display use on the interior of said retailer's place of business; and

3. Not more than two (2) illuminated or electrical signs, each of not more than six hundred thirty (630) square inches in area, which signs may bear the name, brand name, trade name, trade-mark or other designation indicating the name of the manufacturer, and the place of manufacture, of beer, for display by the retail licensee on and within the interior of his place of business, or in the windows inside the place of business of the licensed retailer, and only if the particular brand of beer so advertised on such signs is actually available for sale on the licensee's premises, at the time of such display.

4. Maintenance or repair services on draft beer equipment to keep it sanitary and in good working condition.

~~(b) No brewer or wholesaler shall advance or loan money to, or furnish money for, or pay for or on behalf of any retailer, for any license or tax which by the certificate~~

~~to be paid for any retailer, and no brewer or wholesaler shall be financially interested, either directly or indirectly, in the conduct or operation of the business of a retailer, as herein defined. A brewer or wholesaler shall be deemed to have such a financial interest within the meaning of this section if (1) such brewer or wholesaler owns or holds any interest in, or a lien on or mortgage on that the retailer or his business, or (2) if such brewer or wholesaler is under any contract with a retailer concerning future purchase and/or sale of merchandise by one from or to the other, (3) if any retailer owns an interest as a stockholder, or otherwise, in the business of the wholesaler.~~

~~(c) No sale or delivery of beer shall be made to any retail licensee, except for cash paid within seven (7) days after the delivery thereof, and in no event shall any brewer or wholesaler extend more than seven (7) days' credit on account of such beer to a retail licensee, nor shall any retail licensee accept or receive delivery of such beer without agreement to pay in cash therefor within seven (7) days from delivery thereof. A correctly dated check which is honored upon presentment shall be considered as cash within the meaning of this act. Any extension or acceptance of credit in violation of this shall be regarded and construed as rendering or receiving financial assistance,~~

[illegible]

Section 75. There is a new section to be numbered 4-3-220, R.C.M. 1947, which reads as follows:

4-3-220. Financial interest in retailers prohibited. No brewer or wholesaler shall advance or loan money to, or furnish money for, or pay for or on behalf of any retailer, for any license or tax which may be required to be paid for any retailer, and no brewer or wholesaler shall be financially interested, iether directly or indirectly, in the conduct or operation of the business of a retailer, as herein defined. A brewer or wholesaler shall be deemed to have such a financial interest within the meaning of this section if (1) such brewer or wholesaler owns or holds any interest in, or a lien or mortgagee against the retailer or his premises; or (2) if such brewer or wholesaler is under any contract with a retailer concerning future purchases and/or sale of merchandise by one from, or to the other; (3) if any retailer holds an interest as a stockholder, or otherwise, in the business of the wholesaler.

Section 76. There is a new section to be numbered 4-3-221, R.C.M. 1947, which reads as follows:

4-3-221. Seven day credit limitation. No sale or delivery of beer shall be made to any retail licensee,

except for cash paid within seven (7) days after the delivery thereof, and in no event shall any brewer or wholesaler extend more than seven (7) days' credit on account of such beer to a retail licensee, nor shall any retail licensee accept or receive delivery of such beer without agreement to pay in cash therefor within seven (7) days from delivery thereof. A correctly dated check which is honored upon presentment shall be considered as cash within the meaning of this code. Any extension or acceptance of credit in violation hereof shall be regarded and construed as rendering or receiving financial assistance, and the licenses of both brewers, wholesalers and retail licensees involved in violation hereof shall be suspended or revoked, as determined by the department in its discretion.

Section 77. Section 4-358, R.C.M. 1947, is renumbered section 4-3-222, and is amended to read as follows:

"~~4-358~~ 4-3-222. Limitations on advertising of beer. It shall be lawful to advertise beer containing not more than ~~four~~ seven per centum (~~4~~ 7%) of alcohol by weight, as herein defined and regulated, subject to (a) the restrictions on brewers contained in section ~~4-349~~ 4-3-219 of this ~~act~~ code, and subject to (b) the restrictions on retailers, to wit: No retail licensee ~~under the Montana Beer Act~~ shall display, or permit to be displayed, on the exterior portion or surface

of such retailer's place of business, or on the exterior portion or surface of any building of which said place of business is a part, or on any premises adjacent thereto, whether any of such premises be owned or leased by the retailer, any sign, poster or advertisement bearing the name, brand name, trade name, trade-mark or other [illegible] the manufacturer, brewer, wholesaler or place of manufacture, of any beer whatsoever."

Section 78. Section 4-401, R.C.M. 1947, is renumbered section 4-1-103, and is amended to read as follows:

"~~4-401~~ 4-1-103. Declaration of policy as to retail sale of liquor. It is hereby declared as the policy of the state that it is necessary to further regulate and control the sale and distribution within the state of alcoholic beverages, and to eliminate certain illegal traffic in liquor now existing, and to ensure the entire control of the sale of liquor in the Montana ~~liquor--control--board~~ department of revenue, it is advisable and necessary, in addition to the operation of the state liquor stores now provided by law, that the said ~~board~~ department be empowered and authorized to grant licenses to persons qualified under this ~~act~~ code, to sell liquor purchased by them at state liquor stores at retail [illegible] price in accordance with this ~~act~~ code and under rules and regulations promulgated by the said ~~board~~ department, and under its strict supervision and

control, and to provide severe penalty for the sale of liquor except by and in state liquor stores and by persons licensed under this ~~act~~ code. The restrictions, regulations and provisions contained in this ~~act~~ code are enacted by the legislature for the protection, health, welfare and safety of the people of the state."

Section 79. Section 4-403, R.C.M. 1947, is renumbered section 4-4-202, and is amended to read as follows:

"~~4-403~~ 4-4-202. ~~Issuance--of--retail-liquor-licenses--limit-on-number-of-licenses--retail-wine-licenses--lapse-on-cancellation.~~ All-beverage license quota. (1) Except as otherwise provided by law, a license to sell liquor, beer and wine at retail, an all-beverages license, in accordance with the provisions of this ~~act~~ code and the regulations of the Montana ~~liquor-control-board~~ department of revenue, may be issued to any person who shall be approved by ~~a-majority of-the-board~~ the department as a fit and proper person to sell ~~liquor~~ such beverages; provided, that ~~the-number-of retail-liquor-licenses-which-the-board-may--issue--shall--be determined-as-follows:~~

(a) ~~The~~ the number of ~~retail--liquor~~ all-beverages licenses that the ~~board~~ department may issue for premises situated within incorporated cities and incorporated towns and within a distance of five (5) miles from the corporate limits of such cities and towns shall be determined on the

basis of population as shown by the most recent official United States census authorized by Congress, to wit: In incorporated towns of five hundred (500) inhabitants or less and within a distance of five (5) miles from the corporate limits of such towns, not more than two (2) retail ~~liquor~~ licenses; in incorporated cities or incorporated towns of more than five hundred (500) inhabitants and not over three thousand (3000) inhabitants and within a distance of five (5) miles from the corporate limits of such cities and towns, three (3) retail ~~liquor~~ licenses for the first one thousand (1000) inhabitants and one (1) retail ~~liquor~~ license for each additional one thousand (1000) inhabitants; in incorporated cities of over three thousand (3000) inhabitants and within a distance of five (5) miles from the corporate limits thereof, five (5) retail ~~liquor~~ licenses for the first three thousand (3000) inhabitants and one (1) retail ~~liquor~~ license for each additional one thousand five hundred (1500) inhabitants. The number of the inhabitants in such cities and towns, ~~and in addition~~ exclusive of the number of inhabitants residing within a distance of five (5) miles from the corporate limits thereof, shall govern the number of retail ~~liquor~~ licenses that may be issued for use within such cities and towns and within a distance of five (5) miles from the corporate limits thereof; provided, however, that where two (2) or more incorporated

municipalities are situated within a distance of five (5) miles from each other, the total number of retail ~~liquor~~ licenses that may be issued for use in both of such municipalities and within a distance of five (5) miles from their respective corporate limits, shall be determined on the basis of the combined population of both of such municipalities and shall not exceed the foregoing limitations. Notwithstanding the preceding sentence, the total population for determining the quota of a city may include, with the city's population, the population residing outside, but within five (5) miles of the city limits in a case where the number of persons residing outside but within five (5) miles of the city exceeds the number of persons residing within the city. Such a determination may be made only upon a special census taken by the Department or its agent at the expense of the applicant for a license under this section. The said distance of five (5) miles from the corporate limits of any incorporated city or incorporated town shall be measured in a straight line from the nearest entrance of the premises proposed for licensing to the nearest corporate boundary of such city or town. Retail ~~liquor~~ all-beverages licenses of issue on the date of the passage and approval of this ~~act~~ code and which are in excess of the foregoing limitations shall be renewable, but no new licenses shall be issued in violation of such

limitations; provided that such limitations shall not prevent the issuance of a nontransferable and nonassignable (as to ownership only) retail ~~liquor~~ license to any post of a nationally chartered veterans' organization or any lodge of a recognized national fraternal organization, if such veterans' or fraternal organization has been in existence for a period of five (5) years or more prior to January 1, 1949. No incorporated city or incorporated town may by ordinance restrict the number of licenses that the ~~board~~ department may issue; provided that no retail license may be issued by the ~~board~~ department for any premises situated within any zone of a city or town wherein the sale of liquor is prohibited by ordinance, a certified copy of which has been filed with the ~~board~~ department. The ~~board~~ department shall have discretion to deny the issuance of a retail license if it shall determine that the premises proposed for licensing are off regular police beats and cannot be properly policed by local authorities.

(b) ~~The~~ the number of retail ~~liquor~~ all-beverages licenses that the ~~board~~ department may issue for use at premises situated outside of any incorporated city or incorporated town and outside of the area within a distance of five (5) miles from the corporate limits thereof, shall be not more than one (1) license for each seven hundred fifty (750) population of the county, after excluding the

population of incorporated cities and incorporated towns in such county ~~and the population residing within a distance of five (5) miles from the corporate limits thereof~~.

~~(2) From and after February 1, 1949, any retail license issued pursuant to this act not actually used in a going establishment for a period of ninety (90) days, shall automatically lapse. Upon determining the fact of nonuser for such period the board shall cancel such license of record and no portion of the fee paid therefor shall be refundable. The provisions of this subsection shall not apply to the license or any licensee whose premises are operated on a seasonal basis in connection with a bona fide dude ranch, park hotel, tourist facility or like business, provided such licensee has secured written authority from the board to close his licensed premises for a specified period of greater than ninety (90) days during, and providing further that should the liquor control board determine that such lapse was reasonably beyond the control of the licensee, then the lapse provision set out above shall not apply.~~

~~(c) Resort licenses. It is the intent and purpose of this act to encourage the growth of quality recreational resort facilities in undeveloped areas of the state and to provide for the orderly growth of existing recreational areas by the establishment of resort areas within which~~

1 permit. Liquor licenses may be issued by the board under the
2 terms and as more particularly prescribed below. In
3 addition to the licenses as otherwise set forth in this act,
4 the board may issue resort retail liquor licenses in a
5 resort area.
6 For the purposes of this section, a resort area is
7 defined as a recreational facility meeting the
8 qualifications determined by the board as hereinafter
9 provided.
10 The board shall determine that the area for which
11 licenses are to be issued is a resort area, upon
12 determination so be made under and pursuant to rules and
13 regulations to be promulgated within one hundred eighty
14 (180) days after the passage and approval of this act. In
15 addition to the other requirements of this act, a resort
16 area for the purpose of qualification for the issuance of
17 resort retail liquor license must have a current actual
18 valuation of resort or recreational facilities, including
19 land and improvements thereon, of not less than five hundred
20 thousand dollars ($500,000), at least half of which
21 valuation must be for a structure or structures within the
22 resort area, and must be under the sole ownership or control
23 of one person or entity at the time of the filing of the
24 resort area plat referred to in the next paragraph. The
25 word control shall mean lands held under lease, option, or

1 permit. Before first consideration of rules and regulations in
2 regard to resort liquor licenses, the board shall publish a
3 notice of the hearing on the rules and
4 regulations in a newspaper of general circulation
5 of Billings, Bozeman, Butte, Great Falls, Helena, Miles
6 City, Kalispell and Missoula, Montana, and publication to
7 be published in such newspapers at least once a week for
8 four consecutive weeks, the last of such publications being
9 at least ten (10) but not more than twenty (20) days prior
10 to the date set for said hearing, which shall be held in
11 Helena, Montana, at such time and place as prescribed by the
12 board.
13 The resort area must be determined by the resort
14 developer or landowner by a plat setting forth the resort
15 boundaries designating the ownership of the lands within the
16 resort area which plat must be verified by the resort
17 developer or landowner, and filed with the board prior to
18 the filing of any applications by individuals for licenses
19 within the resort area. Such plat must show the location
20 and general design of the buildings and other improvements
21 to be built in such area in which resort retail liquor
22 licenses are to, or may, be located. A master plan for the
23 development of the resort area may be filed by the resort
24 developer in anticipation of this section.
25 Upon such filing the board shall forthwith recognize a

~~public hearing on such location. However, no application until the facility proposed by the resort developer or landowner is a resort area within the meaning of the rules and regulations of the board; at least thirty (30) days prior to the date of the hearing, the board shall publish notice thereof with a description of the location of the proposed resort area in a newspaper published in the county or counties in which the resort is located, once a week for four (4) consecutive weeks; each resort developer or landowner shall, at the time of filing his application, pay to the board an amount sufficient to cover the costs of said publication. Persons may present statements to the board at the hearing in person or in writing in opposition or support of the plat. Within thirty (30) days of the hearing the board shall accept or reject the plat. If rejected the board must state its reasons and set forth the conditions, if any, under which the plat will be accepted and the decision of the board may be reviewed pursuant to the review procedure set forth in section 4-4[illegible] herein.~~

~~Once filed with the board, the boundaries of a resort may not be changed without full hearing as above provided and the prior approval of the board, which approval shall be according to public convenience and necessity.~~

~~When the board has accepted a plat of a given resort area as being necessary, applications may then be filed~~

~~with the board by persons for the issuance of resort retail liquor licenses within the said resort area. Each applicant must submit plans showing the location, appearance and floor plan of the premises for which application for a license is made.~~

~~If an applicant otherwise qualifies for a resort license but the premises to be licensed are still in construction, or are otherwise incomplete at the time of such application, the board shall issue a letter stating that the license will be issued at such time as the qualifications for a licensed premises have been met, setting forth such time limitations and requirements as the board may establish.~~

~~In addition to the restrictions on sale or transfer of a license as provided in section 4-416 hereof, no resort retail liquor license may be sold or transferred for operation at a location outside of the boundaries of the resort area.~~

~~The annual fee for resort retail liquor licenses within a given resort area shall be two thousand dollars ($2,000) for each such license.~~

~~A resort retail liquor license shall not be subject to the quota limitations set forth in section 4-4[illegible] (1) (a) above and a resort retail liquor license shall be issued by the board on the basis that the board has determined that~~

~~such license to a qualified and qualified correspondence and necessary, following a hearing on a complaint to revoke 4-4-[illegible]:~~

~~If any clause, sentence, paragraph, section or any part of this act shall be adjudged to be invalid and/or unconstitutional, such invalidity or unconstitutionality shall not affect, impair, invalidate or nullify the remainder of this act."~~

Section 80. There is a new section to be numbered 4-4-203, R.C.M. 1947, which reads as follows:

4-4-203. Lapse of license for nonuse. From and after February 1, 1949, any retail license issued pursuant to this code (including any retail license to sell beer for off-premises consumption), not actually used in a going establishment for a period of ninety (90) days, shall automatically lapse. Upon determining the fact of nonuser for such period the department shall cancel such license of record and no portion of the fee paid therefor shall be refundable. The provisions of this subsection shall not apply to the license of any licensee whose premises are operated on a seasonal basis in connection with a bona fide dude ranch, resort, park hotel, tourist facility or like business, provided such licensee has secured written authority from the department to close, has licensed premises for a specified period of greater than ninety (90)

days' duration, and providing further that should the department determine that such lapse was reasonably beyond the control of the licensee, then the lapse provision set out above shall not apply.

Section 81. There is a new section to be numbered 4-4-204, R.C.M. 1947, which reads as follows:

4-4-204. Resort licenses. It is the intent and purpose of this section to encourage the growth of quality recreational resort facilities in undeveloped areas of the state and to provide for the orderly growth of existing recreational sites by the establishment of resort areas within which retail liquor licenses may be issued by the department under the terms and as more particularly prescribed below. In addition to the licenses as otherwise set forth in this act, the department may issue resort retail liquor licenses in a resort area.

For the purposes of this section, a resort area is defined as a recreational facility meeting the qualifications determined by the department as hereinafter provided.

The department shall determine that the area for which licenses are to be issued is a resort area, such determination to be made under and pursuant to rules and regulations to be first promulgated on or before December 31, 1975. In addition to the other requirements of this

code, a resort area for the purposes of qualification for the issuance of resort retail liquor license must have a current actual valuation of resort or recreational facilities, including land and improvements thereon, of not less than five hundred thousand dollars ($500,000), at least half of which valuation must be for a structure or structures within the resort area, and must be under the sole ownership or control of one person or entity at the time of the filing of the resort area plat referred to in the next paragraph. The word control shall mean lands held under lease, option, or permit. Before first adopting such rules and regulations in regard to resort liquor licenses, the department shall publish a notice of the hearing to be held on said rules and regulations in a regularly published newspaper in the cities of Billings, Bozeman, Butte, Great Falls, Helena, Miles City, Kalispell and Missoula, Montana, said publication to be published in said newspapers at least once a week for four consecutive weeks, the last of said publications being at least ten (10) but not more than thirty (30) days prior to the date set for said hearing, which shall be held in Helena, Montana, at a time and place designated by the department.

The resort area must be determined by the resort developer or landowner by a plat setting forth the resort boundaries designating the ownership of the lands within the

resort area which plat must be verified by the resort developer or landowner, and filed with the department prior to the filing of any applications by individuals for licenses within the resort area. Such plat must show the location and general design of the buildings, and other improvements to be built in said area in which resort retail liquor licenses are to, or may, be located. A master plan for the development of the said area may be filed by the resort developer in satisfaction of this section.

Upon such filing the department shall forthwith schedule a public hearing to be held in Helena, Montana, to determine whether the facility proposed by the resort developer or landowner is a resort area within the meaning of the rules and regulations of the department. At least thirty (30) days prior to the date of the hearing, the department shall publish notice thereof with a description of the location of the proposed resort area in a newspaper published in the county or counties in which the resort is located, once a week for four (4) consecutive weeks. Each resort developer or landowner shall, at the time of filing his application, pay to the department an amount sufficient to cover the costs of said publication. Persons may present statements to the department at the hearing in person or in writing in opposition or support of the plat. Within thirty (30) days of the hearing the department shall accept or

review the plat. If rejected the department must state its reasons and set forth the conditions, if any, under which the plat will be accepted and the decision of the department may be reviewed pursuant to the review procedure set forth in section 4-4-402.

Once filed with the department, the boundaries of a resort may not be changed without full hearing as above provided and the prior approval of the department, which approval shall be according to public convenience and necessity.

When the department has accepted a plat and a given resort area has been determined, applications may then be filed with the department by persons for the issuance of resort retail liquor licenses within the said resort area. Each applicant must submit plans showing the location, appearance and floor plan of the premises for which application for a license is made.

If an applicant otherwise qualifies for a resort license but the premises to be licensed are still in construction, or are otherwise incomplete and the time of such application, the department shall issue a letter stating that the license will be issued at such time as the qualifications for a licensed premises have been met, setting forth such time limitations and requirements as the department may establish.

In addition to the restrictions on sale or transfer of a license as provided in section 4-4-206 herein, no resort retail liquor license may be sold or transferred for operation at a location outside of the boundaries of the resort area.

The annual fee for resort retail liquor licenses within a given resort area shall be two thousand dollars ($2,000) for each such license.

A resort retail liquor license shall not be subject to the quota limitations set forth in section 4-4-202 above and a resort retail liquor license shall be issued by the department on the basis that the department has determined that such license is justified by public convenience and necessity, following a hearing as provided in section 4-4-302.

Section 82. Section 4-406, R.C.M. 1947, is renumbered section 4-4-404, and is amended to read as follows:

"~~4-406~~ 4-4-404. Fee for and expiration of licenses. Effective July 1, 1944, and at the same date of each year thereafter, the Montana ~~liquor control board~~ department of revenue shall issue licenses for the retail sale of ~~beer and/or~~ alcoholic beverages liquor on an annual basis, and at such fees as are prescribed by law, and such licenses shall expire at midnight of June 30th of the succeeding year. ~~Provided that when the applicant shall have had a beer~~

~~license or beer and liquor licenses for 1947 no shall pay the fees required for such license or licenses for the first half of 1944 nor shall no question to be raised such license or licenses for the year commencing June 30, 1944.~~ The department shall notify each applicant for an original license or renewal that he should inform himself of applicable provisions of federal law which may require a permit from a federal agency."

Section 83. Section 4-407, R.C.M. 1947, is renumbered section 4-4-301, and is amended to read as follows:

"4-407 4-4-301. Application for license--penalty for false statements. Prior to the issuance of a license as herein provided, the applicant shall file with the Montana ~~liquor control board~~ department of revenue an application in writing, signed by the applicant, and containing such information and statements relative to the applicant and the premises where the ~~liquor~~ alcoholic beverage is to be sold, as may be required by the ~~Montana liquor board~~ department.

The application shall be verified by the affidavit of the person making the same before a person authorized to administer oaths. If any false statement is made in any part of said application, the applicant, or applicants, shall be deemed guilty of a misdemeanor and upon conviction thereof the license, if issued, shall be revoked and the applicant, or applicants, subjected to the penalties

provided by law."

Section 84. Section 4-407.1, R.C.M. 1947, is renumbered section 4-4-302, and is amended to read as follows:

"~~4-407.1~~ 4-4-302. Notice of application--publication--protest. When an application has been filed with the Montana ~~liquor control board~~ department of revenue for a license to sell ~~liquor~~ alcoholic beverages at retail, or to transfer such license, the ~~board~~ department shall promptly publish in a newspaper of general circulation in the city, town or county from whence such application shall come, a notice that such applicant has made application for such license, and that protests against the issuance of a license to the applicant will be heard at a time and place stated in the notice, which shall be ~~at a special or regular meeting of the Montana liquor control board~~ in the city of Helena, Montana. Notice of application for a new license shall be published once a week for four (4) consecutive weeks. Notice of application for transfer of a license shall be published once a week for two (2) consecutive weeks. Notice may be substantially in the following form:

NOTICE OF APPLICATION FOR RETAIL ~~LIQUOR~~

ALL BEVERAGE LICENSE

Notice is hereby given that on the .... day of ...., 19.., one (name of applicant) filed an application for a

[illegible] ~~liquor~~ all [illegible] license [illegible] ~~liquor control board~~ department of revenue, to be used at (describe location of premises where license is to be sold), and protests, if any there be, against the issuance of such license will be heard at the hour of --M, on the .... day of ...., 19.., at the office of the Montana ~~liquor--control board~~ department of revenue, in Helena, Montana.

[illegible] ....

Signed .....

ADMINISTRATOR

No license shall be issued until on or after the date set in the notice for hearing protests. Nor shall a license under this ~~act~~ code be issued if the said Montana ~~liquor control--board~~ department of revenue shall find from the evidence at said hearing that the welfare of the people residing in the vicinity of the place for which such license is desired will be adversely and seriously affected, or that the purposes of the ~~Montana-Retail-liquor-license-Act~~ this code will not be carried out by the issuance of such license. Each applicant shall, at the time of filing his application, pay to the Montana ~~liquor--control---board~~ department of revenue, an amount sufficient to cover the costs of publishing said notice."

Section 85. Section 4-408, R.C.M. 1947, is renumbered section 4-4-303, and is amended to read as follows:

"~~4-408~~ 4-4-[illegible]. [illegible] receipt of ~~an~~ a completed application for a license under this ~~act~~ code, accompanied by the necessary license fee and bond, the ~~board~~ department of revenue shall within thirty (30) days thereafter, cause to be made a thorough investigation of all matters pertaining thereto, and shall determine whether such applicant is qualified to receive a license and his premises are suitable for the carrying on of the business, and whether the requirements of this ~~act~~ code and the rules and regulations promulgated by the ~~board~~ department are met and complied with."

Section [illegible]. Section 4-4[illegible].1, R.C.M. 1947, [illegible] renumbered section 4-4-304, and is amended to read as follows:

"~~4-408~~ 4-4-304. Fingerprints required of licensees. All applicants for a Montana retail ~~liquor~~ all beverage or beer license, including corporate officers and managers, may be required by the department of revenue, when applying for said license to have their fingerprints taken for use in determining the eligibility of the applicant for such license."

Section 87. Section 4-409.1, R.C.M. 1947, is renumbered section 4-4-106, and is amended to read as follows:

"~~4-409.1~~ 4-4-106. [illegible] ~~liquor~~

alcoholic beverages--application and issuance--fee. Any post of a nationally chartered veterans' organization or any lodge of a recognized national fraternal organization, not otherwise licensed under this act, shall in the discretion of the ~~board~~ department of revenue, without notice or hearing as provided in section ~~4-407.1~~ 4-4-302, be entitled to a special permit to sell ~~liquor~~ all alcoholic beverages at such post or lodge, to members and their guests only, to be consumed within the hall or building of such post or lodge.

The application of such nationally chartered veterans' organization or lodge of a recognized national fraternal organization, shall describe the location of the hall or building where the special permit shall be used and the date it will be used. Such application shall be accompanied by a [illegible].

The special permit issued shall be for a twenty-four (24) hour period ending at 2 a.m. only and the ~~board~~ department shall not issue more than twelve (12) such permits to any such post or lodge during a calendar year. [illegible] ~~special permit to sell liquor.~~"

Section 88. Section 4-410, R.C.M. 1947, is renumbered section 4-4-206, and is amended to read as follows:

"~~4-410~~ 4-4-206. Contents of license -- posting -- privilege -- transfer -- expiration. (1) Every license [illegible] ~~act~~ code shall set forth the name of the person to whom issued, the location by street and number, or other appropriate specific description of location if no street address exists, of the premises where the business is to be carried on under said license, and such other information as the ~~board~~ department shall deem necessary. If the licensee is a partnership or if more than one person has any interest in the business operated under the license, the names of all persons in the partnership or interested in the business must appear on the license. Every license must be posted in a conspicuous place on the premises wherein the business authorized under the license is conducted and such license shall be exhibited upon request to any authorized representative of the ~~board~~ department or to any peace officer of the state of Montana.

(2) Any license issued under the provisions of this ~~act~~ code shall be considered a privilege personal to the licensee named in the license and shall be good until the expiration of the license, unless sooner revoked or suspended. A license may be transferred to the executor or administrator of the estate of any deceased licensee when such estate consists in whole or in part of the business of selling liquor under a license and in such event the license

may descend or be disposed of with the business to which it is applicable under appropriate probate proceedings.

(3) In the event of a major loss or damage to licensed premises by unforeseen natural causes, or in case of expiration of lease of the licensed premises, or in the event of eviction or increase of rent by the landlord, in case of rented, licensed premises, or in case of proposed removal of license to premises as substantially suited for [illegible] licensee may apply to the ~~board~~ department for a transfer of the license to a different premises, the ~~board~~ department may in its discretion permit a transfer in such cases if it appears to the ~~board~~ department that such a transfer is required to do justice to the licensee applying for the transfer. The ~~board~~ department shall in no event, nor for any cause, permit a transfer to a different premises where [illegible] satisfactory than such facilities which exist or had existed at the premises from which the transfer is proposed to be made.

(4) Upon a bona fide sale of the business operated under any license the license may be transferred to a qualified purchaser. No transfer of any license as to person or location shall be effective unless and until approved by the ~~board~~ department and any licensee or

transferee or proposed transferee who operates or attempts to operate under any supposedly transferred license prior to the approval of such transfer by the ~~board~~ department, endorsed upon the license in writing, shall be considered as operating without a license and the license affected may be revoked or suspended by the ~~board~~ department. ~~The board shall not in any event permit the transfer of any license beyond the quota area within which such license was originally issued, any such license which is not within a quota area may not be transferred to any premises within a quota area.~~

(a) A license may be transferred to a new ownership and to a location outside the quota area for which it was originally issued only when the following criteria are met:

(i) the total number of all-beverages licenses in the original quota area exceeded the quota for that area by at least twenty-five percent (25%) in the most recent census; and

(ii) the total number of all-beverages licenses in the quota area to which the license would be transferred did not exceed that area's quota by more than twenty-five percent (25%) in the most recent census; and

(iii) the department finds, after a public hearing, that the public convenience and necessity would be served by such a transfer.

(b) A license transferred between quota areas under this section may not be pledged as security or be [illegible] except for a transfer by inheritance upon the death of the licensee. If the licensee is a corporation or [illegible] other than a natural person, ownership interests in the licensee may not be pledged as security or transferred except by inheritance if the value of such ownership interests exceed the fair market value of the real property and inventory owned by the licensee.

Except as above provided, no license shall be transferred or sold, nor shall it be used for any place of business not described in the license, provided however, that such license may be subject to mortgage and other valid liens, in which event the name of the mortgagee, upon application to and approval of the ~~board~~ department, must be endorsed on the license. All licenses shall expire at midnight of June thirtieth of each year."

Section 89. Section 4-411, R.C.M. 1947, is renumbered section 4-4-207 and is amended to read as follows:

"~~4-411~~ 4-4-207. Limit one license to person ~~----beer license;--when--required~~ -- business in name of licensee. No person shall [illegible] more than one all-purpose license in any year. ~~No--person,--firm,--or--corporation--engaged--in--selling--to--a--licensee--under--this--act--shall--be--a--person,--firm,--or--corporation--engaged--in--the--business--of--a--beer~~

~~license--issued--under--the--laws--of--Montana.~~ No business may be carried on under any license issued under this chapter except in the name of the licensee."

Section 90. Section 4-412, R.C.M. 1947, is renumbered section 4-4-108, and is amended to read as follows:

"~~4-412~~ 4-4-108. ~~Persons---disqualified--for--license.~~ License as privilege -- criteria for decision on application. ~~No--license--shall--be--issued--by--the--board--to:~~

~~1.--A--person--who--has--been--convicted--of--being--the--keeper--or--in--keeping--a--house--of--ill--fame;~~

~~2.---A--person--who--has--been--convicted--of--pandering--or--other--crime--or--misdemeanor--opposed--to--decency--and--morality,--under--the--laws--of--the--federal--government--or--any--state--of--the--United--States;~~

~~3.---A--person--whose--license--issued--under--this--act--has--been--revoked--for--cause;~~

~~4.--A--person--who--at--the--time--of--application--for--renewal--of--any--license--issued--hereunder--would--not--be--eligible--for--such--license--upon--a--first--application;~~

~~5.---A--person--who--is--not--qualified--or--whose--premises--do--not--conform--to--the--provisions--of--this--act,--or--with--the--rules--and--regulations--promulgated--by--the--board;~~

~~6.--A--person--who--is--not--a--citizen--of--the--United--States--and--who--has--not--been--a--resident--of--the--state--of--Montana--for--one--and--all--year--immediately--preceding--the--action--of--the--board--in--the--county--in--which--he--shall--be--a--licensee.~~

~~[illegible] for license:~~

~~4.--A person who is not the owner [illegible] of the business:~~

A license under this code is a privilege which the state may grant to an applicant and is not a right to which any applicant is entitled. The department must find, in every case where it makes an order for the issuance of a new license or for the approval of the transfer of a license, that:

(1) the applicant is financially capable, with no ownership interest of his own or of any member of his immediate family in any other establishment licensed under this chapter for all-beverages sales, and without financing from or any affiliation to a manufacturer, bottler, or distributor of beer, wine or liquor;

(2) the applicant is a resident of the state and is qualified to vote in a state election; and

(3) the applicant's past record and present status as a purveyor of alcoholic beverages and as a businessman and citizen demonstrate that he is likely to operate his establishment in compliance with all applicable laws of the state and local governments."

Section 91. Section 4-413, R.C.M. 1947, is renumbered section 4-3-306, and is amended to read as follows:

"~~4-413~~ 4-3-306. Persons to whom ~~liquor~~ alcoholic

beverage may not be sold or given. (1) No licensee or his or her employee or employees, nor any other person, shall sell, deliver, or give away or cause or permit to be sold, delivered or given away any ~~liquor, beer or wine~~ alcoholic beverage to:

~~1.~~ (a) Any person under the age of eighteen (18) years.

~~2.~~ (b) Any intoxicated person or any person actually, apparently or obviously intoxicated.

~~3.--A habitual drunkard.~~

~~4.--An interdicted person.~~

~~5.~~ (2) Any minor, or other person who knowingly misrepresents his or her qualifications for the purpose of obtaining ~~liquor, beer or wine~~ an alcoholic beverage from such licensee shall be equally guilty with said licensee and shall, upon conviction thereof, be subject to the penalty provided in section ~~4-439~~ 94-5-610 provided, however, that nothing herein contained shall be construed as authorizing or permitting the sale of ~~liquor, beer or wine~~ an alcoholic beverage to any person in violation of any federal law."

Section 92. Section 4-415, R.C.M. 1947, is renumbered section 4-4-107, and is amended to read as follows:

"~~4-415~~ 4-4-107. ~~Restrictions on proximity of premises to churches and schools.~~ Proximity to churches and schools restricted. ~~No license shall be granted for any premises~~

[illegible] place of worship or school opened, or located in a bona fide hotel, restaurant, or fraternal organization building at the site since January 1, 1937."

Section 93. Section 4-416, R.C.M. 1947, is renumbered section 4-2-204, and is amended to read as follows:

"4-416 4-2-204. ~~Board~~ Department to sell to licensees -- posted price. The ~~board~~ department is hereby authorized to sell through its stores all kinds of liquor, wine and cordials kept in stock to licensees licensed under this ~~act~~ code at the posted price thereof in the store in which said liquor is sold. All sales shall be upon a cash basis. The posted price as used herein shall mean the retail price of such liquor as fixed and determined by the ~~Montana--liquor control--board~~ Department of revenue and in addition thereto an excise tax as in this act provided."

Section 94. Section 4-417, R.C.M. 1947, is renumbered section 4-1-403, and is amended to read as follows:

"4-417 4-1-403. [illegible] liquor tax--[illegible]. The ~~Montana-liquor-control-board~~ department of revenue is hereby authorized and directed to charge, receive and collect at the time of the sale and delivery of any liquor as authorized under any provision of the laws of the state of Montana an excise tax at the rate of sixteen per centum (16%) of the retail selling price on all liquor so sold and delivered. The ~~Montana liquor control board~~ department of

revenue shall retain the amount of such excise tax received in a separate account and shall deposit with the state treasurer, to the credit of the general fund, such sums so [illegible] (1 st) day of each and every month."

Section 95. Section 4-418, R.C.M. 1947, is renumbered section 4-2-205, and is amended to read as follows:

"~~4-418~~ 4-2-205. Duplicate invoices of sales required. The state liquor store shall upon each and every sale of liquor to any licensee, issue a duplicate invoice of the liquor purchased as provided by ~~said board~~ the department, a copy of which shall be delivered to the licensee and one copy retained at such store. The invoice shall show the date of purchase, name of employee making the sale, the quantity of each kind of liquor purchased, the price paid therefor, the name of the licensee and the number of the license, with such other information as may be required by the ~~board~~ department. The licensee shall keep and retain his duplicate invoice of all purchases made by him from the state liquor store, which shall at all times be subject to inspection by the duly authorized officers, agents and employees of the ~~board~~ department."

Section 96. Section 4-419, R.C.M. 1947, is renumbered section 4-6-102, and is amended to read as follows:

"~~4-419~~ 4-6-102. Sale of liquor not purchased from

state store forbidden -- penalty. It shall be unlawful for any licensee to sell or keep for sale and/or have on his premises for any purpose whatever, any liquor except that purchased from the state liquor store, and any licensee found in possession of, or selling and keeping for sale, any liquor which was not purchased from a state liquor store, shall, upon conviction, be fined not less than five hundred dollars ~~($500.00)~~ ($500) nor more than fifteen hundred dollars ~~($1500.00)~~ ($1500), or by imprisonment for not less than three (3) months nor more than one (1) year, or both such fine and imprisonment, and if the ~~board~~ department shall be satisfied that any such liquor was knowingly sold or kept for sale within the licensed premises by such licensee, or by his agents, servants or employees, it shall be mandatory that said ~~board~~ department immediately revoke the license of said licensee."

Section 97. Section 4-420, R.C.M. 1947, is renumbered section 4-4-407, and is amended to read as follows:

"~~4-420~~ 4-4-407. Penalty for sale of alcoholic ~~liquor~~ beverage without license. Any person, who has not been issued a license under this ~~act~~ code, who shall sell or keep for sale any alcoholic ~~liquor~~ beverage, shall be guilty of a felony and upon conviction thereof shall be fined not less than one thousand dollars ~~($1000.00)~~ ($1000) nor more than five thousand dollars ~~($5,000.00)~~ ($5,000), or be imprisoned

in the state prison for not less than one (1) nor more than five (5) years, or both such fine and imprisonment."

Section 98. Section 4-421, R.C.M. 1947, is renumbered section 4-3-307, and is amended to read as follows:

"~~4-421~~ 4-3-307. Sale of liquor at less than posted price forbidden. It shall be unlawful for any licensee under the provisions of this ~~act~~ code to resell any liquor purchased by such licensee from a state liquor store or the state of Montana for a sum less than the posted price established by the said store and paid by the licensee therefor."

Section 99. Section 4-422, R.C.M. 1947, is renumbered section 4-1-305, and is amended to read as follows:

"~~4-422~~ 4-1-305. Employees of ~~board~~ liquor division not to deal in liquor. No member or employee of the ~~board~~ liquor division of the department, including those engaged in the sale of liquor at the various state liquor stores, shall be directly or indirectly engaged in dealing in liquor whether as owner, part owner, member of a syndicate, shareholder or otherwise, whether for his own benefit or in a fiduciary capacity for others."

Section 100. Section 4-423, R.C.M. 1947, is renumbered section 4-6-206, and is amended to read as follows:

"~~4-423~~ 4-6-206. Officers may seize illicit ~~liquor~~

alcoholic beverages -- forfeiture. Any sheriff, police officer, or ~~inspector~~ investigator appointed under this ~~act~~ code, who shall find any alcoholic ~~beverages,~~ beverage ~~liquor--or-moonshine-which-is~~ kept or held by any person for sale or other disposition in violation of this ~~act~~ code, may forthwith seize and remove the same, and keep the same as evidence, and upon conviction of a person for violation of the provisions hereof, the ~~said--liquor~~ alcoholic beverage and all packages containing the same shall be forfeited to the state of Montana, and in addition the person so violating the law shall be subject to the penalties herein prescribed."

Section 101. Section 4-428, R.C.M. 1947, is renumbered section 4-6-204, and is amended to read as follows:

"~~4-428~~ 4-6-204. Officers may examine premises. The ~~board~~ department of revenue or any duly authorized representative thereof, or the sheriff of any county, shall have the right at any time to make an examination of the premises of ~~such~~ a retail licensee as to whether the law of Montana and the rules and regulations of the ~~said-board~~ department are being complied with, and shall also have a right to inspect cars or aircraft of any ~~railway~~ common carrier system licensed under ~~act~~ this code."

Section 102. Section 4-429, R.C.M. 1947, is

renumbered section 4-4-405, and is amended to read as follows:

"~~4-429~~ 4-4-405. Renewal of suspended licenses. After suspension or revocation of a license the ~~board~~ department shall have the power to renew the same if in its discretion a proper showing therefor has been made."

Section 103. Section 4-430, R.C.M. 1947, is renumbered section 4-4-406, and is amended to read as follows:

"~~4-430~~ 4-4-406. City and county licenses--fees. The city council of any incorporated town or city, or the county commissioners outside of any incorporated town or city, may provide for the issuance of licenses to persons to whom a retail license has been issued under the provisions of this ~~act~~ code, and may fix license fees thereof, not to exceed a sum equal to fifty per cent (50%) of the license fee collected by the ~~board~~ department from such licensee under this ~~act~~ code."

Section 104. Section 4-439, R.C.M. 1947, is renumbered section 4-6-404, and is amended to read as follows:

"~~4-439~~ 4-6-404. Penalty for violation--revocation of license. Any person violating any of the provisions of this ~~act~~ code, shall upon conviction thereof, be deemed guilty of a misdemeanor and punishable by such fine or

imprisonment, or both, as provided ~~by--law~~ in section 95-2206.3, R.C.M. 1947, except as is herein otherwise provided. If any ~~such~~ retail licensee is convicted of any offense under this ~~act~~ code his license shall be immediately revoked, or in the discretion of the ~~board~~ department ~~suspended temporarily or placed on probation by the board~~ such other sanction imposed as may be authorized under section 4-4-402. Further, if any person under the age of eighteen (18) is convicted of an offense under this ~~act~~ code he shall be subject to a one hundred dollar ($100) fine or thirty (30) days in confinement. It shall be further mandatory under the provisions of this ~~act~~ code that all ~~such~~ licensees display in a prominent place in his premises a placard as issued by the ~~board~~ department stating fully the consequences for violations by persons under the age of eighteen (18) years of the provisions of this ~~act~~ code.

Any person who invites a person under the age of eighteen (18) years into a public place where ~~liquor~~ an alcoholic beverage is sold and treats, gives or purchases ~~liquor~~ an alcoholic beverage for such person, or permits such person in a public place where ~~liquor~~ an alcoholic beverage is sold to treat, give or purchase liquor for him, or holds out such person to be over the age of eighteen (18) years to the owner of the ~~liquor~~ establishment, or his or her employee or employees, shall be guilty of a

[illegible]."

Section 105. Section 4-440, R.C.M. 1947, is renumbered section 4-1-106, and is amended to read as follows:

"~~4-440~~ 4-1-106. Saving clause--scope of ~~act~~ code. If any clause, sentence, paragraph, section or any part of this ~~act~~ code shall be declared and adjudged to be invalid and/or unconstitutional, such invalidity or unconstitutionality shall not affect, impair, invalidate or nullify the remainder of this ~~act~~ code. This ~~act~~ code shall apply to the Montana ~~liquor control board~~ department of revenue as now composed and existing, and to any board or commission or other entity which may hereafter succeed the ~~above-said board~~ department."

Section 106. Section 4-[illegible], R.C.M. 1947, is renumbered section 4-5-102, and is amended to read as follows:

"~~4-507~~ 4-5-102. Duties of the county clerk and recorder. Upon making application to the county clerk and recorder for an identification card, the applicant must apply in person before the county clerk and recorder, who shall [illegible] from the applicant:

1. The true and full name of the applicant;

2. The date of birth of the applicant, provided, however, it shall be within the discretion of the officer to

require proof of the date of birth with a certified copy of his or her birth certificate;

3. Place of birth of the applicant;

4. The height and weight of the applicant;

5. The color of eyes and hair of the applicant; and

6. ~~A~~ Two, one and one-quarter inch (1 1/4") by one and one-half inch (1 1/2") photograph of the applicant which shall bear a true resemblance to the applicant. It shall be within the discretion of the clerk and recorder to refuse a photograph which does not present a true resemblance of the applicant. The second photograph is to be filed with the state."

Section 107. Section 4-508, R.C.M. 1947, is renumbered section 4-5-103, and is amended to read as follows:

"~~4-508~~ 4-5-103. County clerk and recorder to forward application to the Montana ~~liquor control board~~ department of revenue for issuance of identification card. The county clerk and recorder shall forward the application, properly filled in and authenticated, to the Montana ~~liquor control board~~ department of revenue, and that ~~board~~ department shall prepare an identification card upon a laminating machine. The identification card shall set forth all the information contained in the application, together with the photograph, and shall be signed by the ~~chairman of~~ director of the

Montana ~~liquor control board~~ department of revenue or his designee."

Section 108. Section 4-509, R.C.M. 1947, is renumbered section 4-5-104, and is amended to read as follows:

"~~4-509. 1-1-101. Montana liquor control board~~ department of revenue to furnish application forms to county clerk and recorders. It shall be the duty of the ~~Montana liquor control board~~ department of revenue to prepare suitable application blanks and cause the same to be distributed to the various county clerk and recorders."

Section 109. Section 4-510, R.C.M. 1947, is renumbered section 4-5-105, and is amended to read as follows:

"~~4-510~~ 4-5-105. Fee to be charged. The county clerk and recorders shall charge and collect a fee of one dollar ~~($1)~~ and fifty cents ($1.50) from the applicant at the time the application is prepared. ~~This fee~~ One dollar ($1) thereof shall be transmitted to the Montana ~~liquor control board~~ department of revenue along with the application and shall be used to defray the cost of administering and executing the provisions of this ~~act~~ code. Any surplus shall revert to the general fund of the state of Montana. The remaining fifty cents ($.50) shall be paid into the general fund of the county to defray the county's costs in

administering this program."

Section 110. There is a new section to be numbered 4-1-107, R.C.M. 1947, which reads as follows:

4-1-107. Definitions. As used in this code:

(1) "Alcohol" means ethyl alcohol, also called ethanol or the hydrated oxide of ethyl.

(2) "Alcoholic beverage" means a compound produced and sold for human consumption as a drink that contains more than one-half of one percent (0.5%) of alcohol by volume.

(3) "Beer" means a malt beverage containing not more then seven percent (7%) of alcohol by weight.

(4) "Brewer" means a person who produces malt beverages.

(5) "Department" means the Montana department of revenue.

(6) "Immediate family" means a spouse, dependent children, or dependent parents.

(7) "Industrial use" means a use described as industrial use by the Federal Alcohol Administration Act and the federal rules and regulations of 27 CFR.

(8) "Liquor" means an alcoholic beverage except beer.

(9) "Malt beverage" means an alcoholic beverage made by the fermentation of an infusion or decoction, or a combination of both, in potable brewing water, of malted barley with or without hops or their parts, or their

products, and with or without other malted cereals and with or without the addition of unmalted or prepared cereals, other carbohydrates or products prepared therefrom, and with or without other wholesome products suitable for human food consumption.

(10) "Package" means a container or receptacle used for holding an alcoholic beverage.

(11) "Proof gallon" means a U. S. gallon of liquor at sixty degrees on the Fahrenheit scale that contains fifty percent (50%) of alcohol by volume.

(12) "Public place" means a place, building, or conveyance to which the public has or may be permitted to have access and any place of public resort.

(13) "Residence" means a building, part of a building, or tent where a person resides, but does not include any part of a building that is not actually and exclusively used as a private residence.

(14) "Rules and regulations" means rules and regulations published by the department pursuant to this act.

(15) "State liquor facility" means a facility owned or under control of the department for the purpose of receiving, storing, transporting, or selling alcoholic beverages.

(16) "State liquor store" means a retail store operated

by the department in accordance with this code for the purpose of selling distilled spirits and wines.

(17) "Storage depot" means a building or structure owned or operated by a brewer at any point in the state of Montana, off and away from the premises of a brewery, and which structure is equipped with refrigeration or cooling apparatus for the storage of beer, and from which a brewer may sell or distribute beer as permitted by this code.

(18) "Warehouse" means a building or structure owned or operated by a licensed wholesaler for the receiving, storage and distribution of beer as permitted by this code.

(19) "Wine" means an alcoholic beverage made from the normal alcoholic fermentation of the juice of sound, ripe, fruit or other agricultural products without addition or abstraction, except as may occur in the usual cellar treatment of clarifying and aging and that contains not less than seven percent (7%) nor more than twenty-four percent (24%) of alcohol by volume. Wine may be ameliorated to correct natural deficiencies, sweetened and fortified in accordance with applicable federal regulations and the customs and practices of the industry. Other alcoholic beverages not defined as above but made in the manner of wine, labeled and sold as wine in accordance with federal regulations are also wine.

Section 111. There is a new section to be numbered

4-1-204, R.C.M. 1947, which reads as follows:

4-1-204. Health professions exemption. A physician, dentist, veterinarian or pharmacist, acting within the scope of his professional responsibility and license to practice, who prescribes, prepares, or administers alcohol or substances containing alcohol, and sells or charges a fee, does not violate the prohibitions of this title.

Section 112. There is a new section to be numbered 4-1-206, R.C.M. 1947, which reads as follows:

4-1-206. Local option. The electors of a county may, by approving an initiative as provided under Title 37, [illegible] R.C.M. 1947, prohibit the sale and consumption of liquor, or of all alcoholic beverages, within the county. If such initiative is presented to the board of county commissioners, the board may not approve it but shall submit the proposal to the people under section 37-301.

Section 113. There is a new section to be numbered 4-1-405, R.C.M. 1947, which reads as follows:

4-1-405. In addition to the annual license tax imposed by section 4-4-401, a tax of three dollars ($3) per barrel of thirty-one (31) gallons is hereby levied and imposed on each and every barrel of beer sold by any duly licensed brewer who manufactures beer in the state of Montana, which said barrelage tax shall be due at the end of each month and shall be payable with the brewer's monthly return or

statement required to be made to the department under the provisions of section 4-3-203.

Section 114. There is a new section to be numbered 4-4-109, R.C.M. 1947, which reads as follows:

4-4-109. Permanent carrier licenses. Common carriers serving Montana may serve beer and liquor to passengers in aircraft over or railroad cars in the state of Montana, upon the issuance by the department of revenue of a retail beer and liquor license for that purpose. Such licenses shall be issued on an annual basis to common carriers making application therefor, and shall be effective from July 1 of the current year to July 1 of the following year. They shall be issued upon payment by the applicant of an annual license fee in the sum of three hundred dollars ($300); provided, that licenses shall be issued for the remainder of the fiscal year commencing July 1, 1968, upon payment of a license fee in the sum of one hundred fifty dollars ($150).

Section 115. There is a new section to be numbered 4-4-110, R.C.M. 1947, which reads as follows:

4-4-110. Payment of liquor taxes by passenger carriers. Every airline or railroad operating in the state of Montana and selling liquor purchased outside this state for consumption within this state shall pay to the Montana department of revenue the excise taxes and state markup which would be applicable to such liquor if purchased from

[illegible]

The amount of such excise taxes and state markup payable shall be determined by multiplying the following [illegible]:

(a) the average liquor used per departure;

(b) the number of departures from Montana on which liquor is served;

(c) the ratio of Montana revenue passenger miles to system revenue passenger miles; and

(d) the applicable excise tax and state markup rates.

[illegible], the carrier shall subtract the amount of excise taxes and state markup on purchases of liquor made within this state.

Section 116. There is a new section to be numbered 4-4-111, R.C.M. 1947, which reads as follows:

4-4-111. Other accounting methods -- forms. (1) The method provided in section 4-4-110 shall be presumed to determine fairly and correctly the liquor purchased outside this state and sold for consumption with this state. Any carrier aggrieved by the application of such method may [illegible]. Thereupon, if the department finds that the application of such method will be unjust to the carrier, it may allow the use of the method so petitioned for by the airline or may use such other method as will fairly reflect the liquor

purchased outside this state and served for consumption within this state.

(2) The department shall prescribe report forms which shall be used by the carriers in reporting their sales and computing their liability for excise taxes and markup. Report forms shall be filed and payment of excise taxes and state markup shall be made on a quarterly basis. The filing of report forms and payment of excise taxes and state markup shall be made not later than the last day of the month immediately following the close of each quarterly period.

Section 117. There is a new section to be numbered 4-6-202, R.C.M. 1947, which reads as follows:

4-6-202. Arrest, entry of complaint, and lawful search and seizure authorized. The department shall enforce the provisions of this code, and may appoint certain of its investigators as peace officers for the purpose of enforcing this code. The powers of such persons under Title 95, R.C.M. 1947, are limited to violations of a provision of this code. Within these limits, a peace officer may arrest any person violating this code, may enter complaint before any court of competent jurisdiction, and may lawfully search for and seize for use as evidence any unlawful or unlawfully possessed liquor, beer, licenses or stamps.

Section 118. There is a new section to be numbered 4-3-308, R.C.M. 1947, which reads as follows:

[illegible] person who sells, or offers for sale, liquor, nor the agent or employee of such person, may--

(1) place in any liquor bottle any liquor whatsoever other than those contained in such bottle at the time of stamping by the federal government; or

(2) possess any liquor bottle in which any liquor has been placed in violation of subsection (1); or

(3) by the addition of any substance whatsoever to any liquor bottle, in any manner alter or increase any portion of the original contents contained in such bottle at the time of stamping by the federal government; or

(4) possess any liquor bottle, any portion of the contents of which has been altered or increased in violation of subsection (3); except that this section does not prohibit any reuse of liquor bottles which is permitted under laws or regulations of the federal government.

Section 119. Section 41-2004, R.C.M. 1947, is amended to read as follows:

"41-2004. Definition of terms. For the purposes of this act the words and phrases used herein have the [illegible]:

(1) "Person" includes any establishment, firm, partnership, corporation, person or association of persons.

(2) "Restaurant" means a public eating house where

food is prepared and served for human consumption on the [illegible].

(3) "Lessee" means one to whom a lease is made.

(4) "Bar" or "tavern" means a house where liquor or beer are sold to be drunk on the premises.

(5) "Liquor" means ~~and---includes~~ any ~~alcoholic spirituous,--vinous,--fermented,-malt-or-other-liquor,-water containing-more-than-one-per-centum-(1%)-of-alcohol-by-weight, but-shall-not-mean-or-include-beer-as-that-term--is--defined in--the-Montana-Beer-Act-by-subsection-(r)-of-section-4--and, Revised-Codes-of-Montana,-1947~~ beverage so defined in the Alcoholic Beverages Code.

(6) "Beer" means any beverage ~~obtained-by-alcoholic fermentation-of-an-infusion-or-decoction-of-barley,-malt-and hops,-or--of--any--similar--products,--in--drinkable--water, containing--not--more---than--four-per-centum-(4%)-alcohol-by weight~~ so defined in the Alcoholic Beverages Code.

(7) "Employee" means a person who works for wages or salary in the service of an employer.

(8) "Business" means a commercial enterprise of any kind involving the buying and selling of goods."

Section 120. The following sections of the Revised Codes of Montana 1947 are renumbered as follows: 4-114.1 is renumbered 4-2-202; 4-114.2 is renumbered 4-2-203; 4-119 is renumbered 4-2-102; 4-151 is renumbered 4-3-101; 4-160 is

renumbered 4-3-105; 4-170 is renumbered 4-3-103; 4-172 is renumbered 4-6-105; 4-206 is renumbered 4-6-107; 4-207 is renumbered 4-6-108; 4-241 is renumbered 4-1-402; 4-315 is renumbered 4-3-205; 4-317.2 is renumbered 4-3-207; 4-317.3 is renumbered 4-3-208; 4-317.4 is renumbered 4-3-209; 4-317.5 is renumbered 4-3-210; 4-317.6 is renumbered 4-3-211; 4-322 is renumbered 4-3-215; 4-323 is renumbered 4-3-216; 4-324 is renumbered 4-1-404; 4-329 is renumbered 4-3-303; 4-403.1 is renumbered 4-4-205; 4-404 is renumbered 4-4-403; 4-408.2 is renumbered 4-4-305; 4-506 is renumbered 4-5-101; 4-512 is renumbered 4-5-106.

Section 121. Sections 4-102, 4-104, 4-105, 4-106, 4-110, 4-111, 4-115, 4-118, 4-134, 4-135, 4-136, 4-137, 4-138, 4-142, 4-143, 4-144, 4-145, 4-146, 4-147, 4-148, 4-149, 4-159, 4-163, 4-167, 4-173, 4-201, 4-202, 4-203, 4-204, 4-205, 4-221, 4-222, 4-223, 4-227, 4-228, 4-230, 4-232, 4-234, 4-235, 4-236, 4-237, 4-239, 4-302, 4-305, 4-306, 4-307, 4-312, 4-314, 4-317.8, 4-337, 4-339, 4-345, 4-350, 4-351, 4-352, 4-353, 4-354, 4-355, 4-356, 4-402, 4-405, 4-409, 4-414, 4-424, 4-425, 4-431, 4-432, 4-433, 4-434, 4-435, 4-436, 4-437, 4-438, 4-441, 4-501, 4-502, 4-503, 4-504, 4-505, 4-513, and 4-514, R.C.M. 1947, are repealed.

-End-

APPENDIX B

INDEX CHARTS FOR USE WITH THE LIQUOR LAW REVISION BILL

Index charts designed to facilitate study of the proposed revision of Title 4 are presented on the following pages. Two charts are presented. Chart I shows the proposed organization of a revised Title 4. Section numbers, catch lines, and bill sections are listed. Chart II shows all present sections in Title 4, and whether they are renumbered or repealed and what section of the bill handles them.

Using these charts, it should be easy to discern the general organization of the proposed Title 4, and the disposition of all present sections in Title 4. The user should note that the repeal of a current section by the bill does not necessarily mean its substance was deleted. There is sufficient redundancy in Title 4 that many sections could be combined by the proposal without losing the effect of those sections. For this reason, a person concerned that the substance of a particular section might have been lost should check the catch lines in Chart I and the substance of the bill to determine whether the section might have been consolidated with another. A paranthetical reference in Chart II, such as "121 (114)," means that the affected section is technically disposed of by the first section, 121 in the example, but that the substantive provisions of the old section reappears in section 114 of the bill.

INDEX CHART I

CHAPTER ONE
STATE CONTROL AND ADMINISTRATION

4-1-101. Citation--declaration of policy--subject matters of regulation. (Section 1)
4-1-102. Declaration of policy as to sale of beer. (Section 45)
4-1-103. Declaration of policy as to retail sale of liquor. (Section 78)
4-1-104. Intent and construction of code. (Section 42)
4-1-105. Divisions of code. (Section 2)
4-1-106. Savings clause--scope of act. (Section 105)
4-1-107. Definitions. (Section 110)

4-1-201. Sale of liquor, possession of liquor, when unlawful. (Section 16)
4-1-202. Application of code. (Section 14)
4-1-203. Preparations not subject to code. (Section 15)
4-1-204. Healing professions exempted. (Section 111)
4-1-205. Licensed hospital or health care facility. (Section 13)
4-1-206. Local option. (Section 112)

4-1-301. General powers and duties of the department. (Section 3)
4-1-302. Functions, powers and duties of department. (Section 5)
4-1-303. Regulations may be made by department--scope of regulations. (Section 6)
4-1-304. Liquor division employees not to be interested in liquor sales--unlawful to give or receive gift, commission or remuneration. (Section 18)
4-1-305. Employees of liquor division not to deal in liquor. (Section 99)
4-1-306. Properties and moneys acquired belong to state--expenses of administration, how paid. (Section 40)
4-1-307. Principal office of department. (Section 4)

4-1-401. License tax on liquor--amount--distribution of proceeds. (Section 44)
4-1-402. Use of proceeds of license tax. (Section 120)
4-1-403. Excise liquor tax--collection. (Section 94)
4-1-404. Tax on imported beer--computation in case of barrels of capacity other than thirty-one gallons. (Section 120)
4-1-405. Barrelage tax. (Section 113)
4-1-406. Disposition of money received. (Section 41)
4-1-407. Revenue to be paid to state treasurer--disposition of revenue. (Section 72)
4-1-408. Revenue allocation. (Section 73)

CHAPTER TWO
STATE STORES

4-2-101. Establishment of state liquor stores--kinds and prices of liquor. (Section 7)
4-2-102. Containers to be sealed with official seal--opening

package on liquor store premises forbidden. (Section 120)

4-2-103. Conveyance of liquors--opening liquor during transit forbidden. (Section 12)

4-2-104. When sales of liquor forbidden. (Section 11)

4-2-105. Place and time of selling liquor. (Section 17)

4-2-106. Provisions concerning sale of liquor. (Section 8)

4-2-107. Liquor not to be consumed on premises of state store. (Section 10)

4-2-201. No reduction for quantity sales. (Section 9)

4-2-202. Price of liquor made in Montana. (Section 120)

4-2-203. Repealing clause. (Section 120)

4-2-204. Department to sell to licensees--posted price. (Section 93)

4-2-205. Duplicate invoices of sales required. (Section 95)

CHAPTER THREE
CONTROL OF LIQUOR, WINE AND BEER

4-3-101. Liquor dispensed only in accordance with act. (Section 120)

4-3-102. Liquor container must have been sealed with official seal. (Section 21)

4-3-103. Unlawful to canvass for orders for sale or purchase of liquor--advertising liquor or beer, where prohibited--exceptions. (Section 120)

4-3-104. Purchase of beer must be from licensed brewer, wholesaler, or retailer. (Section 67)

4-3-105. Liquor in hotels--restrictions on. (Section 120)

4-3-201. Possession, manufacture or disposal of beer in other manner than prescribed unlawful. (Section 49)

4-3-202. Beer, sales, when permitted. (Section 48)

4-3-203. Brewer's monthly report--power of department to inspect books and premises. (Section 51)

4-3-204. Sale of beer by brewers--to whom. (Section 52)

4-3-205. Brewers not to retail beer, when. (Section 120)

4-3-206. Persons to whom brewers may sell beer. (Section 53)

4-3-207. Illegal acts by brewers defined. (Section 120)

4-3-208. Contracts, agreements, franchises--mandatory provisions. (Section 120)

4-3-209. Transfer of interest in business. (Section 120)

4-3-210. Contractual or franchise relationship--existence by actions. (Section 120)

4-3-211 Injunctive relief--when granted. (Section 120)

4-3-212. Agreements filed with department of revenue. (Section 55)

4-3-213. Monthly report of wholesaler. (Section 57)

4-3-214. To whom wholesaler may sell. (Section 59)

4-3-215. When wholesaler may sell to public. (Section 120)

4-3-216. Consumption of beer on wholesalers' premises unlawful. (Section 120)

4-3-217. Penalty for brewer's failure to make returns--lien of taxes--enforcement--release. (Section 60)

4-3-218. Carriers' reports of beer transported. (Section 61)
4-3-219. Lease or gift of furniture fixtures, equipment restricted. (Section 74)
4-3-220. Brewers or wholesalers not to have financial interest in retailers. (Section 75)
4-3-221. Beer not to be sold on more than seven days' credit. (Section 76)
4-3-222. Limitations on advertising of beer. (Section 77)

4-3-301. Purchase of beer by retailer--persons to whom beer may not be sold, delivered or given by brewers, wholesalers or retailers. (Section 64)
4-3-302. Sale of beer by retailer--consumption on premises. (Section 63)
4-3-303. Sale of beer by retailer for consumption off premises. (Section 120)
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4-3-305. Sale of beer during closed hours forbidden--lawful business need not be closed. (Section 47)
4-3-306. Persons to whom liquor may not be sold. (Section 91)
4-3-307. Sale of liquor at less than posted price forbidden. (Section 98)

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4-4-101. Applications for sale or manufacture of beer--qualifications. (Section 50)
4-4-102. Right of brewers to maintain and operate storage depots--annual licenses. (Section 54)
4-4-103. Wholesalers' licenses--application for an issuance--subwarehouse. (Section 56)
4-4-104. Retailers' license--application and issuance--display required. (Section 62)
4-4-105. Special permits to sell beer--application and fees. (Section 65)
4-4-106. Special permits to sell liquor--application and issuance--fee. (Section 87)
4-4-107. Restrictions on proximity of premises to churches and schools. (Section 92)
4-4-108. License as privilege--criteria for decision on application. (Section 90)
4-4-109. Passenger carrier license. (Section 114)
4-4-110. Payment of liquor taxes by passenger carriers. (Section 115)
4-4-111. Other accounting methods--forms. (Section 116)

4-4-201. Beer licenses--beer and wine amendment--quotas. (Section 66)
4-4-202. All-beverages retail license--quotas. (Section 79)
4-4-203. Lapse and cancellation. (Section 80)
4-4-204. Resort license. (Section 81)
4-4-205. Department to make determination. (Section 120)
4-4-206. Contents of license--posting--privilege--transfer--expiration. (Section 88)

4-4-207. Limit one license to person--business in name of licensee. (Section 89)

4-4-301. Application for license--penalty for false statements. (Section 83)
4-4-302. Notice of application--publication--protest. (Section 84)
4-4-303. Investigation of application. (Section 85)
4-4-304. Fingerprints may be required. (Section 86)
4-4-305. Holders of security interests. (Section 120)

4-4-401. Fees for licenses--expiration dates--regulation by cities and towns. (Section 68)
4-4-402. Denial of application for license or renewal--suspension or revocation--actions. (Section 69)
4-4-403. License fee for retail sale of liquor within and without cities and towns of designated populations--census of population. (Section 120)
4-4-404. Fee for and expiration of licenses. (Section 82)
4-4-405. Renewal of suspended licenses. (Section 102)
4-4-406. City and county licenses--fees. (Section 103)
4-4-407. Penalty for sale of alcoholic liquor without license. (Section 97)

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4-5-101. All persons attaining the age of 18 years may apply to the county clerk and recorder for an identification card. (Section 120)
4-5-102. Duties of the county clerk and recorder. (Section 106)
4-5-103. County clerk and recorder to forward application to the Montana department of revenue for issuance of identification card. (Section 107)
4-5-104. Montana department of revenue to furnish application forms to county clerks and recorders. (Section 108)
4-5-105. Fee to be charged. (Section 109)
4-5-106. Misrepresenting age or falsely procuring or altering identification card. (Section 120)

CHAPTER SIX
ENFORCEMENT

4-6-101. Transfer of alcoholic beverages except as provided by code unlawful. (Section 19)
4-6-102. Sale of liquor not purchased from state store forbidden--penalty. (Section 96)
4-6-103. Providing alcoholic beverages prohibited. (Section 23)
4-6-104. Age limit for sale of alcoholic beverages. (Section 24)
4-6-105. Public clubs prohibited. (Section 120)
4-6-106. Consumption of alcoholic beverages in druggists' premises prohibited. (Section 20)

4-6-107. Officer or agent of corporation deemed party to offense, when. (Section 120)
4-6-108. Occupant of premises deemed party to offense, when. (Section 120)

4-6-201. Investigators and prosecuting officers may be employed by department of revenue. (Section 39)
4-6-202. Arrest, entry of complaint and lawful search authorized. (Section 117)
4-6-203. Search warrants--issuance. (Section 25)
4-6-204. Officers may examine premises. (Section 102)
4-6-205. Unlawful alcoholic beverages--seizure--forfeiture. (Section 22)
4-6-206. Officers may seize illicit alcoholic beverages--forfeiture. (Section 100)
4-6-207. Seizure of liquor and conveyance--forfeiture of conveyance and liquor to state. (Section 26)
4-6-208. Force may be used in seizure of alcoholic beverages, when--retention of seized alcoholic beverages--forfeiture hearing. (Section 27)
4-6-209. Disposal of forfeited alcoholic beverages--report by officers of seizure. (Section 28)
4-6-210. Inspection of carriers' records--when authorized. (Section 29)
4-6-211. Unlawful for carrier to refuse inspection of records. (Section 30)

4-6-301. Jurisdiction of court. (Section 70)
4-6-302. Appeals. (Section 38)
4-6-303. Description of offense--sufficiency of. (Section 31)
4-6-304. Description of offense--sufficiency--defenses need not be negatived. (Section 32)
4-6-305. Sufficiency of evidence. (Section 33)
4-6-306. Proof of violation--sufficiency. (Section 34)
4-6-307. Analyst's report as prima facie evidence of contents. (Section 35)
4-6-308. Presumption of intoxicating beverage arises, when. (Section 36)
4-6-309. Inferences from facts of code claimed to be violation. (Section 37)

4-6-401. Premises where liquor illegally sold common nuisance. (Section 43)
4-6-402. Action to enjoin nuisance--injunction--order of court--bond. (Section 71)
4-6-403. Penalty for brewer's and wholesaler's failure to pay tax. (Section 58)
4-6-404. Penalty for violating act--revocation of license. (Section 104)

[illegible] SECTION	[illegible] SECTION	[illegible] (REVISED OR REPEAL)
4-101	1	4-1-101
4-102	121 (110)	R
4-103	2	4-1-105
4-104	121	R
4-105	121	R
4-106	121	R
4-107	3	4-1-301
[illegible]-109	4	4-1-307
4-110	121	R
4-111	121	R
4-112	5	4-1-302
4-113	6	4-1-303
[illegible]	[illegible]	[illegible]
4-114.1	120	4-2-202
4-114.2	120	4-2-203
4-115	121	R
4-116	8	4-2-106
4-117	9	4-2-201
[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]
4-120	10	4-2-102
[illegible]-121	11	4-2-104
4-122	12	4-2-103
4-134	121 (111)	R
[illegible]	[illegible]	[illegible]
[illegible]-136	121 (111)	R
[illegible]	[illegible]	[illegible]
4-138	121 (111)	R
4-139	13	4-1-205
4-140	14	4-1-202
4-141	15	4-1-203
[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]
4-144	121 (112)	R
4-145	121 (112)	R
[illegible]	[illegible]	[illegible]

[illegible] SECTION	[illegible] SECTION	[illegible] (REVISED OR REPEAL)
4-147	121 (112)	R
4-148	121 (112)	R
4-149	121 (112)	R
4-150	16	4-1-201
4-151	120	4-3-101
4-152	17	4-2-105
4-153	18	4-1-304
4-154	19	4-6-101
4-156	20	4-6-106
4-158 (1)	21	4-3-102
4-158 (2)	22	4-6-205
4-159	121	R
[illegible]	[illegible]	[illegible]
4-161	24	4-6-104
4-163	121	R
4-167	121	R
4-169	120	4-3-105
4-170	120	4-3-103
[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]
4-201	121	R
4-202	121	R
4-203	121	R
4-204	121	R
[illegible]	[illegible]	[illegible]
4-206	120	4-6-107
[illegible]	[illegible]	[illegible]
4-208	25	4-6-203
4-209	26	4-6-207
4-210	27	4-6-208
4-211	28	4-6-209
[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]
4-214	31	4-6-303
4-215	32	4-6-304
[illegible]	[illegible]	[illegible]

INDEX CHART II

PRESENT SECTION	BILL SECTION	DISPOSITION (REVISED OR REPEAL)
4-217	34	4-6-306
4-218	35	4-6-307
4-219	36	4-6-308
4-220	37	4-6-309
4-221	121	R
4-222	121	R
4-223	121	R
4-224	38	4-6-302
4-225	[illegible]	4-6-201
4-226	40	4-1-306
4-227	121	R
4-228	121	R
4-229	41	4-1-406
4-230	121	R
4-232	121	R
4-233	42	4-1-104
4-234	121	R
4-235	121	R
4-236	121	R
4-237	121	R
4-238	43	4-6-401
4-239	121	R
4-240	44	4-1-401
4-241	[illegible]	4-1-408
4-301	45	4-1-102
4-302	121 (110)	R
4-303	46	4-3-304
4-304	47	4-3-305
4-305	121	R
4-306	121	R
4-307	121	R
4-308	48	4-3-202
4-309	[illegible]	4-3-301
4-310	[illegible]	4-4-101
4-311	51	4-3-203
4-312	[illegible]	R

PRESENT SECTION	BILL SECTION	DISPOSITION (REVISED OR REPEAL)
4-313	52	4-3-204
4-314	121	R
4-315	120	4-3-205
4-317	53, 113	4-3-206
4-317.1	54	4-4-102
4-317.2	120	4-3-207
4-317.3	120	4-3-208
4-317.4	120	4-3-209
4-317.5	120	4-3-210
4-317.6	120	4-3-211
4-317.7	55	4-3-212
4-317.8	121	R
4-318	56	4-4-103
4-319	57	4-3-213
4-320	58	4-6-403
4-321	59	4-3-214
4-322	120	4-3-215
4-323	120	4-3-216
4-324	120	4-1-404
4-325	60	4-3-217
4-326	61	4-3-218
4-327	62	4-4-104
4-328	63	4-3-302
4-329	120	4-3-303
4-331	64	4-3-301
4-332	65	4-4-105
4-333	66	4-4-201
4-337	121 (114)	R
4-338	67	4-3-104
4-339	121	R
4-340	68	4-4-401
4-342	69	4-4-402
4-344	70	4-6-301
4-345	121	R
4-346	71	4-6-402
4-347	[illegible]	4-1-407

[illegible] SECTION	BILL SECTION	DISPOSITION (REVISED OR REPEAL)
4-347.1	73	4-1-408
[illegible]	74, 75, 76	4-3-219 - 4-3-221
[illegible]	[illegible]	[illegible]
4-351	[illegible]	[illegible]
4-352	121 (112)	R
4-353	121 (112)	R
[illegible]	121 (112)	R
[illegible]	121 (112)	R
[illegible]	[illegible]	[illegible]
[illegible]	77	4-3-222
[illegible]	78	4-1-103
[illegible]	121 (110)	R
[illegible]	79, 80, 81	4-4-202 - 4-4-204
[illegible]	120	4-4-205
[illegible]	[illegible]	[illegible]
[illegible]	121	R
[illegible]	[illegible]	[illegible]
4-407	[illegible]	4-4-301
[illegible]	84	4-4-302
[illegible]	85	4-4-303
[illegible]	86	4-4-304
[illegible]	[illegible]	[illegible]
4-409	121	R
[illegible]	87	4-4-106
[illegible]	88	4-4-206
[illegible]	89	4-4-207
4-412	90	4-4-108
[illegible]	91	4-3-306
[illegible]	[illegible]	[illegible]
4-415	92	4-4-107
[illegible]	93	4-2-204
[illegible]	94	4-1-403
[illegible]	95	4-2-205
[illegible]	[illegible]	[illegible]

[illegible] SECTION	BILL SECTION	DISPOSITION (REVISED OR REPEAL)
4-420	97	[illegible]
4-421	98	[illegible]
4-422	99	[illegible]
4-423	100	[illegible]
[illegible]	[illegible]	[illegible]
4-425	121	[illegible]
4-428	101	[illegible]
4-429	102	[illegible]
4-430	103	[illegible]
[illegible]	[illegible]	[illegible]
4-432	121 (112)	[illegible]
[illegible]	[illegible]	[illegible]
4-434	121 (112)	R
[illegible]	[illegible]	R
[illegible]	[illegible]	[illegible]
4-437	121 (112)	[illegible]
[illegible]	[illegible]	[illegible]
4-439	104	[illegible]
4-440	105	[illegible]
[illegible]	[illegible]	[illegible]
4-501	121	[illegible]
[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	R
4-505	121	[illegible]
[illegible]	[illegible]	[illegible]
4-507	106	[illegible]
4-508	107	4-5-103
4-509	108	[illegible]
4-510	109	4-5-105
[illegible]	[illegible]	[illegible]
4-513	121	(R, [illegible]
4-514	121	[illegible]

APPENDIX C

DEPARTMENT OF REVENUE
LIQUOR DIVISION

RETAIL PRICING SHEET

COMPANY NAME

ADDRESS

MONTANA CODE

SIZE

CASE WEIGHT

NO. IN CASE

F.O.B. POOL POINT

MIN FREIGHT RATE/LB

FREIGHT IN (Lbs x rate)

BASE CASE COST $

FREIGHT IN

LOCAL TRUCKING COST

CASE COST $
(Helena Warehouse)

BOTTLE COST $
(Divide case cost by No. bottles in case)

FREIGHT OUT

RETAIL STORE COST $

MARK UP %
(Check schedule)

sub-total $

STATE EXCISE TAX –

TOTAL $

RETAIL SELL PRICE $

MARK–UP PERCENTAGES BY CLASSIFICATION:

Bottled in Bonds, Blends, Bourbons Vodkas, Gins, Tequillas, Ryes Tennesee, Mash, Brandys	30%
Canadian & Scotchs (Note: Deduct Fed. Tax from Net Cost before computing 60% markup)	60%

Federal Tax:

Fifths	$1.30 per bottle
Half Gallons	$3.25 per bottle

Wines:

Case Cost up to $8.00	82%
Case Cost over $8.00	60%

FREIGHT OUT BOTTLE COST

Minatures	.60
One-Half Pints	.02
Pints & Tenths	[illegible]
Quarts & Fifths	[illegible]
One-Half Gal. & Mags.	[illegible]
Gallons	[illegible]

DATE DUE

DEMCO 38-301

S
328.3
LI3a

Montana. Legislative Council.
Alcholic beverage control statutes: interim study/ by the Subcommittee on Judiciary.--
Helena: Montana Legislative Council, 1974.

STATE DOCUMENTS

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